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Part I, Volume 21, Number 75

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8th grade

Central Middle School, Galveston ISD

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TEXAS ETHICS COMMISSION

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Office of the Governor

Criminal Justice Division

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ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042 and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open record decisions are summarized for publication in the ***Texas Register***. The Attorney General responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the Attorney General unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. To request copies of opinions, phone (512) 462-0011. To inquire about pending requests for opinions, phone (512) 463-2110.

Request for Opinions

ID# 38695 Request from Anthony P. Picchioni, Texas State Board of Examiners of Professional Counselors, 1100 West 49th Street, Austin, Texas 78756-3183, concerning authority of the Texas State Board of Examiners of Professional Counselors to conduct an executive session to discuss pending complaints.

ID# 38698 Request from the Honorable Kenny Marchant, Chair, Committee on Financial Institutions, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether requirements imposed by §2256.005(k), Government Code, for a "Public Funds Investment Act Acknowledgment and Certification Form".

ID# 38781 Request from the Honorable Debra Danburg, Chair, Committee on Elections, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning whether the creation of alcohol-free school zones.

ID# 38787 Request from John Malin, Executive Director, Executive Council of Physical and Occupational Therapy Examiners Board, 333 Guadalupe, Suite 2-510, Austin, Texas 78701-3942, concerning reimbursement of per diem and travel expenses for council and board members of the Executive Council of Physical and Occupational Therapy Examiners, the Board Physical Therapy Examiners, and the Board of Occupational Therapy Examiners.

ID# 38818 Request from The Honorable Don Henderson, Chair, Committee on Jurisprudence, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning authority of a homeowners association to assess additional fees or raise existing fees pursuant to the Property Code, §204.010.

ID# 38830 Request from The Honorable Thomas F. Lee, District Attorney, 63rd Judicial District, P.O. Box 1405, Del Rio, Texas 78841, concerning whether the Del Rio Chamber of Commerce Room Tax Committee is subject to the Open Meetings Act, Chapter 551, Government Code.

ID# 38838. Request from The Honorable Carlos Lara, County Auditor, 103 North Fifth Street, Carrizo Springs, Texas 78834, concerning whether a county attorney may utilize county owned computer equipment and the services of a county employee in his private law practice.

ID# 38855 Request from the Honorable W. Keith Oakley Chair, Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910 concerning municipal regulation of manufactured housing.

ID# 38863 Request from the Honorable James Kuboviak, County Attorney, Brazos County, 300 East 26th Street, Bryan, Texas 77803, concerning procedure for implementing Letter Opinion 96-060 (1996), which held that, where the district court and the statutory county courts have concurrent misdemeanor jurisdiction, only the district clerk may accept misdemeanor cases for filing.

ID# 38882 Request from the Honorable Steven Hilbig, Bexar County, Criminal District Attorney, 300 Dolorosa, Suite 5072 , San Antonio, Texas 78205-3030, concerning whether an office holder is required to report a particular transaction as a contribution and or an expenditure.

ID# 38886 Request from the Honorable Tim Curry, Criminal District Attorney, 401 West Belknap Street, Fort Worth, Texas 76196-0201, concerning whether a member of the executive committee of the Ft. Worth Transportation Authority must reside within the boundaries of a member municipality.

ID# 38887 Request from Brenda F. Arnett, Executive Director, Texas Department of Commerce, P.O. Box 12728, Austin, Texas 78711-2728, concerning applicability of the Open Meetings Act to the Capitol Certified Development Corporation.

ID# 38890 Request from the Honorable Barry Telford, Chair, Committee on Pensions and Investments, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning application of rider 6 to the current appropriation for the Optional Retirement Program, with regard to public community and junior college employees.

ID# 38895 Request from the Honorable David Motley, County Attorney, 700 East Main Street, Suite B20, Kerrville, Texas 78028-5324, concerning authority of a justice of the peace to subpoena records from a municipal EMS department.

ID# 38906 Request from Tommy V. Smith, Executive Director, Texas Department of Licensing and Regulation, P. O. Box 12157, Austin, Texas 78711, concerning applicability of Texas Civil Statutes, Article 8861, the Air Conditioning and Refrigeration Contractor's License Law, to municipal licensing ordinances.

ID# 38908 Request from the Honorable Tom Craddick, Chair, Committee on Ways and Means, House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning applicability of the Tax Code, §11.31 to an injection well that is operated solely for the purpose of treating and disposing of commercial waste.

ID# 38916 Request from the Honorable Rene Guerra, Criminal District Attorney, Hidalgo County Courthouse, Edinburg, Texas 78539, concerning design/build construction contracts for a county detention facility.

ID# 38929 Request from the Honorable John Vance, District Attorney, Dallas County, Frank Crowley Courts Building, Dallas, Texas 75207-4313, concerning authority of the City of Wylie to enforce its fire code outside its city limits in the absence of a declaration of nuisance.

ID# 38941 Request from the Honorable Steven C. Hilbig, Bexar County Criminal District Attorney, 300 Dolorosa, Suite 5072, San Antonio, Texas 78205-3030, concerning fee for filing verified petition for occupational drivers license following conviction for DWI.

ID# 38943 Request from the Honorable Stephen H. Smith, District Attorney, 119 Judicial District, 124 Beauregard, Courthouse Street Annex, San Angelo, Texas 76903, concerning whether a county may set a five cent surcharge on the sale of items from vending machines in the county courthouse for an employee benefit fund.

ID# 38948 Request from the Honorable Jennifer Noack, Acting Executive Director, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, concerning whether the Board of Examiners of Psychologists may authorize the use of "psychological extenders" acting under the supervision of a licensed psychologist.

ID# 38953 Request from the Honorable George P. Morrill, II, District Attorney, 156th Judicial District of Texas, Bee County Courthouse, Room 205, Beeville, Texas 78102, concerning whether an elected county attorney may simultaneously serve as an assistant district attorney in the same county, and related questions.

ID# 38954 Request from Craig Pederson, Executive Administrator, Water Development Board, 1700 North Congress Avenue, Austin, Texas 78711, concerning whether a state agency may award a $50.00 savings bond in recognition of an employee's service.

ID# 38964 Request from the Honorable Hugo Berlanga, Chair, Committee on Public Health, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, concerning Use of needles by a chiropractor.

ID# 39009 Request from the Honorable Robert Jarvis, Grayson County Attorney, Justice Center, Suite 116A, Sherman, Texas 75090, concerning authority of a home rule city to require an escrow deposit from the developer of a subdivision within its extraterritorial jurisdiction.

ID# 39010 Request from Jack Crump, Executive Director, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711, concerning regulatory authority of the Commission on Jail Standards with regard to certain private jail facilities.

ID# 39014 Request from the Honorable Judith Zaffirini, Chair, Health and Human Services, Texas State Senate, P.O. Box 12068, Austin, Texas 78711-2068, concerning whether the state may enter into a contingent fee contract with a private law firm for the provision of legal services involved in a particular lawsuit.

TRD-9614573

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 texas 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.

AOR Number 384

Whether a statewide officeholder may accept an invitation to attend a fundraiser for a nonprofit organization during the moratorium on political contributions.

AOR Number 385

Reporting requirements in a situation in which a candidate or officeholder uses political contributions to reimburse himself for the use of a personal vehicle for campaign or officeholder purposes.

AOR Number 386

Whether an incumbent candidate for district judge may use campaign contributions received since October 1995 to repay a campaign loan from a 1992 campaign.

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 305, Government Code; (4) Title 15, Election Code; (5) Chapter 36, Penal Code; and (6) 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.

Issued in Austin, Texas, on October 3, 1996

TRD-9614506
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: October 4, 1996

♦ ♦ ♦

PROPOSED RULES

Before an agency may permanently adopt a new or amended section or repeal an existing section, aproposal 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 bythe use of **bold text**. [Brackets] indicate deletion of existing material within a section.

TITLE 1. ADMINISTRATION

Part I. Office of the Governor

Chapter 3. Criminal Justice Division

The Office of the Governor proposes the repeal of Chapter Three, §§3.11, 3.12, 3.21, 3.31-3.34, 3.41-3.53, 3.61-3.84, 3.91-3.96, 3.100-3.107, 3.401-3.438, 3.501-3.540, 3.601-3.644, 3.701-3.706, 3.721-3.725, 3.741-3.744, 3.761- 3.763, 3.811, 3.812, 3.821, 3.831-3.838, 3.841-3.843, 3.851-3.873, 3.881, and 3.911-3.920, concerning the Criminal Justice Division. Subchapter A concerns Criminal Justice. Subchapter B concerns Crime Stoppers Advisory Council Membership and organization of the council. Subchapter C concerns Administration of Narcotics Control Program. These sections are repealed in order to concurrently propose the adoption of new rules for Chapter Three of the Texas Administration Code which are contemporaneously proposed elsewhere in this issue of the *Texas Register*.

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general there is no fiscal impact for state government as a result of repealing this chapter.

Mr. Jones also has determined that the repeals will have no anticipated economic cost to persons or small businesses.

Comments on the repeals may be submitted to Pete Wassdorf, Deputy General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the repeals in the *Texas Register*.

Subchapter A. Criminal Justice

General Powers

1 TAC §3.11, §3.12

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc1] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.11. Legal Authorization.

§3.12. Applicability.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614053
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Applicable Statutes, Documents and Forms

1 TAC §3.21

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

The repeal is authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc1] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeal.

§3.21. Compliance; Adoption by Reference.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614054
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Juvenile Justice and Delinquency Prevention Advisory Board

1 TAC §§3.31-3.34

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc2] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.31. Purpose.

§3.32. Meetings.

§3.33. Quorum.

§3.34. Order of Business.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614055
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Eligible Applicants and Application Processing

1 TAC §§3.41-3.53

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc3] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.41. Eligible Applicants.

§3.42. Regional and State Agency Criminal Justice Plans.

§3.43. Continuation Funding.

§3.44. Project Priorities.

§3.45. Maintenance of Effort.

§3.46. Multijurisdictional Projects.

§3.47. Multiregion Projects.

§3.48. Grant Applications.

§3.49. Review of Grant Applications.

§3.50. Revision of Grant Application.

§3.51. Nonsupplanting Requirement.

§3.52. Nonlobbying Certification.

§3.53. Application for Supplemental Funds.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614056
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Implementation and Operation of Projects

1 TAC §§3.61-3.84

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc4] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeal.

§3.61. Award and Acceptance of Grant Award.

§3.62. Approval.

§3.63. Operation of Grant.

§3.64. Implementation of Grant .

§3.65. Grant Adjustments.

§3.66. Grant Extensions.

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§3.68. Obligation of Grant Funds.

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§3.73. Cancellation of Project.

§3.74. Misappropriation of Funds.

§3.75. Withholding Funds from Grantees.

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§3.77. Termination for Cause.

§3.78. Appeal for Termination of Grant.

§3.79. Statewide Private Nonprofit Organizations.

§3.80. Travel.

§3.81. Funding for Vehicles.

§3.82. Uniform Crime Reporting.

§3.83. Payment of Outstanding Liabilities.

§3.84. Funding for Project Promotion.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614057
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Continuation of Funding Policy for Local Projects

1 TAC §§3.91-3.96

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc5] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.91. Applicability.

§3.92. Criminal Justice Funds.

§3.93. Requirements.

§3.94. Level of Funding for New Projects.

§3.95. Local Commitment.

§3.96. Multiagency Organized Crime Control Projects.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614058
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Audits of Criminal Justice Division Projects and Audit Report Exceptions

1 TAC §§3.100-3.107

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc6] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.100. Audit Standards.

§3.101. Audit Objectives.

§3.102. Known or Suspected Violations of Laws.

§3.103. Grantee's Response to Audit Exceptions.

§3.104. Documentation by Grantee.

§3.105. Audit Review Board.

§3.106. Report of Audit Review Board.

§3.107. Refunds to the Criminal Justice Division on Audit Review Board Determinations.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Administration of the Renovation and/or Operation of Jail Facilities Assistance Program

1 TAC §§3.401-3.438

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc7] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.401. Legal Authorization.

§3.402. Applicability.

§3.403. Compliance; Adoption by Reference.

§3.404. Eligible Applicants.

§3.405. Grant Applications.

§3.406. Review of Applications.

§3.407. Revision of Grant Applications.

§3.408. Nonsupplanting Requirements.

§3.409. Nonlobbying Certification.

§3.410. Application for Supplemental Funds.

§3.411. Bonding and Insurance.

§3.412. Award and Acceptance of Grant Award.

§3.413. Implementation of Grant.

§3.414. Operation of Grant.

§3.415. Payment of Outstanding Liabilities.

§3.416. Grant Adjustments.

§3.417. Grant Extensions.

§3.418. Requests for Funds.

§3.419. Obligation of Grant Funds.

§3.420. Third Party Participation.

§3.421. Financial, Performance, and Inventory Reports.

§3.422. Deobligation of Funds.

§3.423. Cancellation of Projects.

§3.424. Misappropriation of Funds.

§3.425. Withholding Funds from Grantees.

§3.426. Conditions for Withholding Funds from Grantees.

§3.427. Termination for Cause.

§3.428. Appeal of Termination of Grant.

§3.429. Statewide Private Nonprofit Organizations.

§3.430. Funding of Vehicles.

§3.431. Audit Standards.

§3.432. Audit Objectives.

§3.433. Grantee's Response to Audit Exceptions.

§3.434. Documentation by Grantee.

§3.435. Audit Review Board.

§3.436. Report of Audit Review Board.

§3.437. Refunds to the Criminal Justice Division on Audit Review Board Determinations.

§3.438. Known or Suspected Violations of Laws.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Administration of the Crime Stoppers Assistance Program

1 TAC §§3.501-3.540

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc8] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.501. Legal Authorization.

§3.502. Applicability.

§3.503. Compliance; Adoption by Reference.

§3.504. Eligible Applicants.

§3.505. Organization Structure.

§3.506. Grant Applications.

§3.507. Review of Grant Applications.

§3.508. Revision of Grant Applications.

§3.509. Nonsupplanting Requirement.

§3.510. Nonlobbying Certification.

§3.511. Bonding and Insurance.

§3.512. Award and Acceptance of Grant Award.

§3.513. Implementation of Grant.

§3.514. Operation of Grant.

§3.515. Bonding Requirement.

§3.516. Grant Adjustments.

§3.517. Grant Extensions.

§3.518. Requests for Funds.

§3.519. Obligation of Grant Funds.

§3.520. Compensation to Victims of Crime Fund.

§3.521. Third Party Participation.

§3.522. Financial, Monthly Performance and Inventory Report.

§3.523. Deobligation of Funds.

§3.524. Cancellation of Project.

§3.525. Misappropriation of Funds.

§3.526. Security and Privacy.

§3.527. Withholding Funds from Grantee.

§3.528. Conditions for Withholding Funds from Grantees.

§3.529. Termination for Cause.

§3.530. Appeal of Termination of Grant.

§3.531. Travel.

§3.532. Payment of Outstanding Liabilities.

§3.533. Audit Standards.

§3.534. Audit Objectives.

§3.535. Known or Suspected Violations of Laws.

§3.536. Grantee's Response to Audit Exceptions.

§3.537. Documentation by Grantee.

§3.538. Audit Review Board.

§3.539. Report of the Audit Review Board.

§3.540. Refunds to the Criminal Justice Division on Audit Review Board Determinations.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Administration of the Crime Victims Assistance Program

1 TAC §§3.601-3.644

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc9] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.601. Legal Authorization.

§3.602. Applicability.

§3.603. Compliance; Adoption by Reference.

§3.604. Advisory Council.

§3.605. Eligible Applicants.

§3.606. Project Requirements.

§3.607. Allocation of Funds.

§3.608. Grant Applications.

§3.609. Review of Grant Applications.

§3.610. Revision of Grant Application.

§3.611. Nonsupplanting Requirement.

§3.612. Nonlobbying Certification.

§3.613. Bonding and Insurance.

§3.614. Award and Acceptance of Grant Award.

§3.615. Implementation of Grant.

§3.616. Operation of Grant.

§3.617. Training.

§3.618. Cash Payment to Victims.

§3.619. Payment of Outstanding Liabilities.

§3.620. Grant Adjustments.

§3.621. Grant Extensions.

§3.622. Requests for Funds.

§3.623. Obligation of Grant Funds.

§3.624. Third Party Participation for Entire Project Operation.

§3.625. Financial, Performance, and Inventory Reports.

§3.626. Deobligation of Funds.

§3.627. Cancellation of Project.

§3.628. Misappropriation of Funds.

§3.629. Security and Privacy.

§3.630. Withholding Funds from Grantees.

§3.631. Conditions for Withholding Funds from Grantees.

§3.632. Termination for Cause.

§3.633. Appeal of Termination of Grant.

§3.634. Audit Requirement Classifications.

§3.635. Audit Requirements for Nonprofit Organizations.

§3.636. Audit Requirements for Local Units of Government and State Agencies That Receive Less than $100,000 Annually in Federal Funds, from All Sources Combined.

§3.637. Audit Requirements for Local Units of Government and State Agencies That Receive More than $100,000 Annually in Federal Funds, from All Sources Combined.

§3.638. Known or Suspected Violations of Laws.

§3.639. Grantee's Response to Audit Exceptions.

§3.640. Documentation by Grantee.

§3.641. Audit Review Board.

§3.642. Report of the Audit Review Board.

§3.643. Refunds to the Criminal Justice Division on Audit Review Board Determinations.

§3.644. Civil Rights.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Subchapter B. Crime Stoppers Advisory Council Membership and Organization of the Council

Membership and Organization of the Council

1 TAC §§3.701-3.706

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc10] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.701. Members of the Council.

§3.702. Meetings of the Council.

§3.703. Selection of Council Director.

§3.704. Election of Officers.

§3.705. Powers and Duties of Chairman.

§3.706. Amendments.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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Local Crime Stoppers Programs

1 TAC §§3.721-3.725

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc11] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.721. General Policy.

§3.722. Assistance Provided to Local Crime Stoppers Programs by Council.

§3.723. Relationship to State Crime Feature to Local Crime Features.

§3.724. Availability of Grant Funds to Local Crime Stoppers Programs.

§3.725. Relationship of State Rewards to Local Rewards.

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

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Pete Wassdorf
Deputy General Counsel
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Reward Program

1 TAC §§3.741-3.744

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc12] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.741. General Policy.

§3.742. Eligibility for State Reward.

§3.743. Amount of Rewards–Payment.

§3.744. Selection of State Crime Features.

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

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Pete Wassdorf
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Hotline Program

1 TAC §§3.761-3.763

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc13] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.761. General Policy.

§3.762. Hours of Operation.

§3.763. Record Keeping.

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

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Subchapter C. Administration of Narcotics Control Program

General Powers

1 TAC §3.811, §3.812

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc14] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.811. Legal Authorization.

§3.812. Applicability.

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

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For further information, please call: (512) 475-2595

Applicable Statutes, Documents, and Forms

1 TAC §3.821

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

The repeal is authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc15] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this repeal.

§3.821. Compliance; Adoption by Reference.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Eligible Applicants and Application Processing

1 TAC §§3.831-3.838

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc16] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.831. Eligible Applicants.

§3.832. Multijurisdictional Projects.

§3.833. Grant Applications.

§3.834. Review of Grant Applications.

§3.835. Revision of Grant Applications.

§3.836. Nonsupplanting Requirement.

§3.837. Nonlobbying Certification.

§3.838. Civil Rights.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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Project Requirements

1 TAC §§3.841, 3.842, 3.843

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc17] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.841. Eligible Projects.

§3.842. Classification of Projects.

§3.843. Level of Funding for Projects.

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

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Pete Wassdorf
Deputy General Counsel
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For further information, please call: (512) 475-2595

Implementation and Operation of Projects

1 TAC §§3.851-3.873

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc18] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.851. Award and Acceptance of Grant Award.

§3.852. Approval.

§3.853. Operation of Grant.

§3.854. Implementation of Grant.

§3.855. Grant Adjustments.

§3.856. Grant Extensions.

§3.857. Requests for Funds.

§3.858. Obligations of Grant Funds.

§3.859. Third Party Participation.

§3.860. Financial, Progress, and Inventory Reports.

§3.861. Narcotics Control Activity Reports.

§3.862. Uniform Crime Reporting.

§3.863. Deobligation of Funds.

§3.864. Cancellation of Project.

§3.865. Misappropriation of Funds.

§3.866. Withholding Funds from Grantees.

§3.867. Conditions for Withholding Funds from Grantees.

§3.868. Notification of Withholding of Funds.

§3.869. Appeals to Criminal Justice Division.

§3.870. Release of Funds.

§3.871. Termination for Cause.

§3.872. Appeal of Termination of Grant.

§3.873. Payment of Outstanding Liabilities.

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

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TRD-9614072
Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Continuation Funding Policy for Projects

1 TAC §3.881

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

The repeal is authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc19] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by this repeal.

§3.881. Requirements.

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

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Pete Wassdorf
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Audits of Criminal Justice Division Projects and Audit Report Exceptions

1 TAC §§3.911-3.920

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

The repeals are authorized under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc19] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by the repeals.

§3.911. Audit Responsibilities.

§3.912. Audit Standards.

§3.913. Audit Objectives.

§3.914. Audit Implementation.

§3.915. Known or Suspected Violations of Laws.

§3.916. Grantee's Response to Audit Exceptions.

§3.917. Documentation by Grantee.

§3.918. Audit Review Board.

§3.919. Report of Audit Review Board.

§3.920. Refunds to the Criminal Justice Division on Audit Review Board Determinations.

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

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Pete Wassdorf
Deputy General Counsel
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Chapter 3. Criminal Justice Division

The Office of the Governor proposes new Chapter Three, §§3.1, 3.5, 3.100, 3.105, 3.110, 3.115, 3.120, 3.125, 3.130, 3.135, 3.140, 3.150, 3.160, 3.165, 3.180, 3.185, 3.200, 3.205, 3.210, 3.215, 3.220, 3.225, 3.230, 3.235, 3.240, 3.250, 3.260, 3.280, 3.285, 3.290, 3.300, 3.305, 3.310, 3.315, 3.320, 3.325, 3.330, 3.335, 3.340, 3.350, 3.380, 3.385, 3.390, 3.400, 3.405, 3.410, 3.415, 3.420, 3.425, 3.430, 3.435, 3.440, 3.450, 3.480, 3.485, 3.500, 3.505, 3.510, 3.515, 3.520, 3.525, 3.530, 3.535, 3.540, 3.545, 3.550, 3.555, 3.560, 3.570, 3.580, 3.585, 3.600, 3.605, 3.610, 3.615, 3.620, 3.625, 3.630, 3.635, 3.640, 3.645, 3.655, 3.660, 3.680, 3.685, 3.690, 3.695, 3.700, 3.705, 3.710, 3.715, 3.720, 3.725, 3.730, 3.735, 3.740, 3.760, 3.770, 3.780, 3.785, 3.900, 3.905, 3.910, 3.915, 3.920, 3.925, 3.930, 3.935, 3.940, 3.945, 3.950, 3.955, 3.960, 3.970, 3.980, 3.985, 3.1000, 3.1005, 3.1010, 3.1015, 3.1020, 3.1025, 3.1030, 3.1035, 3.1050, 3.1060, 3.1080, 3.1085, 3.1090, 3.2000, 3.2005, 3.2010, 3.2015, 3.3045, 3.3050, 3.3055, 3.3060, 3.3065, 3.3070, 3.3075, 3.4000, 3.4005, 3.4010, 3.4015, 3.4020, 3.4025, 3.4030, 3.4035, 3.4040, 3.4045, 3.4050, 3.4055, 3.4060, 3.4065, 3.4070, 3.4075, 3.4080, 3.4085, 3.4090, 3.4095, 3.4100, 3.4105, 3.4110, 3.4115, 3.4120, 3.4125, 3.4130, 3.3435, 3.4140, 3.5000, 3.5005, 3.6000, 3.6005, 3.6010, 3.6015, 6.6020, 3.6025, 3.6030, 3.6035, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6085, 3.6090, 3.6095, 3.6100, 3.7000, 3.7005, 3.7010, 3.7015, 3.7020, 3.8000, 3.8100, 3.8105, 3.8110, 3.8115, 3.8120, 3.8200, 3.8205, 3.8210, 3.8215, 3.8220, 3.8300, 3.8305, 3.8310, 3.8315, and 3.8320 concerning the Criminal Justice Division. Subchapter A concerns Criminal Justice Division. Subchapter B concerns Fund-Specific Grant Policies. Subchapter C concerns General Eligibility Requirements. Subchapter D concerns Criminal Justice Division Advisory Boards. This Chapter clearly identifies, defines and provides other information on important policies, community planning, application submission guidelines, budget information, grant administration guidelines, program monitoring and auditing, funding sources, advisory boards, governing directives, and other relevant statutes. These new rules replace the existing Chapter Three which is contemporaneously repealed elsewhere in this issue of the *Texas Register* .

Tom Jones, Director of Accounting for the Criminal Justice Division has determined that in general these rules do not have any fiscal impact on the state. The funds remain stable and the method for allocating funds on a regional basis has not changed. However, the decreasing funding ratio for State Criminal Justice Planning Fund (421), Juvenile Justice and Delinquency Prevention Act Fund, and Safe and Drug Free Schools Act Fund allows for more agencies to access to Criminal Justice Division dollars as other agency's funds decrease. Additionally, the cash match requirement for Fund 421 has been removed, which allows greater local flexibility in their financial support of grant projects.

Mr. Jones also has determined that the proposed rules will have no anticipated economic cost to persons or small businesses.

Comments on the proposed new rules may be submitted to Pete Wassdorf, Deputy General Counsel, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the new rules in the *Texas Register*.

Subchapter A. Criminal Justice Division

General Powers

1 TAC §3.1, §3.5

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc1] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.1. Legal Authorization.

These rules are promulgated under Texas Civil Statutes, article 4413(32a), §6(a)(11), which provide the Criminal Justice Division of the Office of the Governor, with the authority to adopt rules,

regulations, and procedures necessary to carry out provisions of the Act.

§3.5. Applicability.

These rules shall apply to applications and grants for the 1997 and subsequent state fiscal years. Applications and grants for prior state fiscal years shall be governed by the rules in effect at the time the applications was submitted and/or the grant was awarded.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614074

Pete Wassdorf

Deputy General Counsel

Office of the Governor

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For further information, please call: (512) 475-2595

Subchapter B. Fund-Specific Grant Policies

State Criminal Justice Planning (421) Fund

1 TAC §§3.100, 3.105, 3.110, 3.115, 3.120, 3.125, 3.130, 3.135, 3.140, 3.150, 3.160, 3.165, 3.180, 3.185

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc2] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.100. Source and Purpose.

The Criminal Justice Planning Fund is established by articles 102.051-102.056, Code of Criminal Procedure. Section 772.006, Government Code, designates the Criminal Justice Division of the Office of the Governor as the administering agency. The source of funds is a biennial appropriation by the Texas Legislature from a fund collected from court costs and fees. Funds may provide for a wide range of projects designed to reduce crime and improve the criminal and juvenile justice systems.

§3.105. Eligible Projects.

Grant applications must meet the rules set forth in §3.2005 and §3.2010 of this chapter (relating to Juvenile Justice and Youth Projects and Criminal Justice Projects).

§3.110. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local units of government, universities and colleges, independent school districts, regional education service centers, local crime control and prevention districts, state agencies, private nonprofit corporations, and native American tribes. When a nonprofit corporation applies for a local grant, they must show in their application that the local government does not wish to apply for funds on their behalf because such action is not feasible.

§3.115. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) For local and regional projects, the Criminal Justice Division allocates money to the regional councils of governments through a formula based on population and crime rate. The COGs' executive committees and criminal justice advisory committees assign priorities to applications. The COG submits applications and priority rankings to CJD. CJD makes all final funding decisions based on eligibility and availability of funds.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.120. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on September 1 of each year. Grants may start on that date or any time after during the same fiscal year.

§3.125. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.130. Years of Funding.

The maximum years of funding available for a single project is five years. CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results, and continued need is documented. The executive director of CJD must approve such an exemption in writing.

§3.135. Funding Levels.

In general, the minimum amount that may be applied for in grant funds is $5,000. If the decreasing funding ratio referenced in §3.140 (of this title relating to Decreasing Funding Policy) causes a continuation application to be eligible for less than that amount, then the lower amount is acceptable providing the minimum was met in the first year of funding. There is no maximum grant award.

§3.140. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. CJD will not consider any project for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD or earned as program income.

(c) Grants with original fiscal years of funding of 1994 or before are exempt from the benchmark policy and follow rules in effect at the time of original funding. Continuation funding, however, is not guaranteed.

(d) Projects to regional councils of governments for planning or regional law enforcement projects are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.

§3.150. Professional and Contractual Services.

In addition, to the general policies referenced in §3.3050 (of this title relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.160. Equipment.

In addition, to the general policies in §3.3060 (of this title relating to Equipment) CJD will only provide funds for up to 50% of the costs of equipment purchases. Such purchases may only be made in the first year of funding.

§3.165. Renovation and Retrofitting.

(a) CJD may approve grants for the renovation or retrofitting of existing facilities. These facilities must be used for juvenile detention in compliance with the Texas Family Code.

(b) Total charges for renovation and retrofitting may not exceed $100,000 in Criminal Justice Division funds.

(c) Grantees must provide a cash match equivalent to the amount of CJD funding.

§3.180. Indirect Costs.

Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs.

§3.185. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

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

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Pete Wassdorf
Deputy General Counsel
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For further information, please call: (512) 475-2595

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Juvenile Justice and Delinquency Prevention Act Fund

1 TAC §§3.200, 3.205, 3.210, 3.215, 3.220, 3.225, 3.230, 3.235, 3.240, 3.250, 3.260, 3.280, 3.285, 3.290

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc3] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.200. Source and Purpose.

The source of these federal funds is the Juvenile Justice and Delinquency Prevention Act, §5601 et seq. of title 42, United States Code, as amended. The Office of Juvenile Justice and Delinquency Prevention in the United States Department of Justice provides an annual formula grant to Texas. The Criminal Justice Division awards these funds to a wide range of state and local applicants, both public and nonprofit.

§3.205. Eligible Projects.

Projects must meet the requirements of §3.2005 (of this title relating to Juvenile Justice and Youth Projects). 3.210 Eligible Applicants Eligible to apply for grant funds are regional councils of governments, local units of government, universities and colleges, independent school districts, regional education service centers, local crime control and prevention districts, state agencies, nonprofit corporations, and native American tribes.

§3.215. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) For local and regional projects, the Criminal Justice Division allocates money to the regional councils of governments through a formula based on population and crime rate. The COGs' executive committees and criminal justice advisory committees assign priorities to applications. The COG submits applications and priority rankings to CJD. CJD makes all final funding decisions based on eligibility and availability of funds.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.220. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on September 1 of each year. Grants may start on that date or any time after during the same fiscal year.

§3.225. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.230. Years of Funding.

The maximum years of funding available for a single project is five years. CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results, and continued need is documented. The executive director of CJD must approve such an exemption in writing.

§3.235. Funding Levels.

In general, the minimum amount that may be applied for in grant funds is $5,000. If the decreasing funding ratio §3.240 (of this title relating to Decreasing Funding Policy) causes a continuation application to be eligible for less than that amount, then the lower amount is acceptable providing the minimum was met in the first year of funding. There is no maximum grant award.

§3.240. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. No project under this policy will be considered for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD or earned as program income.

(c) Grants with original fiscal years of funding of 1994 or before are exempt from the benchmark policy and follow rules in effect at the time of original funding. Continuation funding, however, is not guaranteed.

(d) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.

§3.250. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.260. Equipment.

In addition, to the general policies in §3.3060 (of this title relating to Equipment), CJD will only provide funds for up to 50% of the costs of equipment purchases. Such purchases may only be made in the first year of funding.

§3.280. Indirect Costs.

Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs.

§3.285. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

§3.290. Compliance Requirements.

To remain eligible for funds, grantees must remain in compliance with Title 3, §§51.12, 52.025, 52.027, and 52.028, Texas Family Code, regarding appropriate detention of accused juvenile offenders and with section 511.009(a), Government Code, requiring law enforcement agencies to submit annual reports to the Texas Commission on Jail Standards, with respect to detention of juveniles in adult jails and lockups.

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

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Title V Delinquency Prevention

1 TAC §§3.300, 3.305, 3.310, 3.315, 3.320, 3.325, 3.330, 3.335, 3.340, 3.350, 3.380, 3.385, 3.390

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc4] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.300. Source and Purpose.

The source of these federal funds is the Juvenile Justice and Delinquency Prevention Act, §5601 et seq. of title 42, United States Code, as amended. The Office of Juvenile Justice and Delinquency Prevention in the United States Department of Justice provides an

annual formula grant to Texas. CJD makes the funds available for local projects to implement comprehensive plans developed by local communities. The strategy of these plans is to reduce risk factors that contribute to delinquent behavior and to strengthen protective factors that make children more resistant to such behavior.

§3.305. Eligible Projects.

Projects must meet the requirements of §3.2005 (of this title relating to Juvenile Justice and Youth Projects). Additionally, projects must address identified risk factors, including, individual characteristics such as alienation, rebelliousness, and lack of bonding to society; family influences such as parental conflict, child abuse, and a family history of substance abuse, criminality, teen pregnancy, and school dropout; school problems such as early academic failure and lack of commitment to school; negative peer group influences in the areas of drugs, gangs, and violence; and neighborhood factors such as economic deprivation, high rates of substance abuse, crime, and neighborhood decay. Applicants must develop and implement a comprehensive community strategy. Strategies must include an inventory of all resources available to implement the strategy, including federal, state, local, and private.

§3.310. Eligible Applicants.

Eligible to apply for grant funds are regional councils of governments, local units of governments, and native American tribes.

§3.315. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The council of governments then submits applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

§3.320. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on April 1 of each year.

§3.325. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.330. Years of Funding.

The maximum years of funding available for a single project is five years. CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results and continued need is documented. CJD must approve such an exemption in writing.

§3.335. Funding Levels.

The minimum amount that may be applied for in grant funds is $25,000. The maximum amount that may be applied for is $100,000.

§3.340. Match Policy.

(a) Grantees must provide a match that is equivalent to the total amount of the grant award. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

(b) Under this policy, the grantee agency is responsible for the required cash or in-kind match and must identify the source of the match in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) If the grantee uses in-kind contributions to satisfy any part of the match requirement, the following guidelines apply:

(1) Limit in-kind contributions shown in the grant application and subsequent grant accounting records to the items and amounts necessary to meet minimum grant-matching requirements.

(2) In-kind contributions may consist of volunteer time, professional services, travel, building space, nonexpendable equipment, materials, and supplies contributed within the grant period to the grantee by a third party.

(3) An in-kind contribution may include depreciation and use fees for buildings or equipment before the start of the grant period and used in the grant project. Such fees qualify as an in-kind contribution only when based on established cost and depreciation records maintained by the grantee.

(4) Grantees are required to maintain records of all in-kind contributions to reflect a full description of the item or service; the area, expressed in square feet, if the item is building space; the name of the contributor; the date when the contribution was made; the fair market value of the contribution and how the value was determined; and in the case of a discount given, the contributor's signature on an affidavit of worth and a statement that the discount is based on the nature of the program and is not available to the general public.

§3.350. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Services) CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.380. Indirect Costs.

Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs.

§3.385. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The last report is due after the end of each three month reporting period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

§3.390. Compliance Requirements.

To remain eligible for funds, grantees must remain in compliance with Title 3, §§51.12, 52.025, 52.027, and 52.028, Texas Family Code, regarding appropriate detention of accused juvenile offenders and with section 511.009(a), Government Code, requiring law enforcement agencies to submit annual reports to the Texas Commission on Jail Standards, with respect to detention of juveniles in adult jails and lockups.

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

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Safe and Drug-Free Schools and Communities Act Fund

1 TAC §§3.400, 3.405, 3.410, 3.415, 3.420, 3.425, 3.430, 3.435, 3.440, 3.450, 3.480, 3.485

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc5] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.400. Source and Purpose.

The program is established by the Safe and Drug-Free Schools and Communities Act, Public Law 103-382, title IV, which provides an annual formula grant to Texas. The federal funding agency is the United States Department of Education. The Criminal Justice Division awards these funds to a wide range of state and local applicants, both public and private nonprofit, to address common goals. The goals are to create a neighborhood that is free of drugs and weapons, to foster individual responsibility, to promote respect for the rights of others, and to promote school attendance, discipline, and learning.

§3.405. Eligible Projects.

(a) The ways in which applicants may address these problems are flexible, based on local needs. A comprehensive community plan must set forth needs, describe existing programs, and describe ways in which the proposed grant-funded project will work with other grant-funded projects in the same target neighborhood to achieve the common goal of drug- and violence-free neighborhoods. The plan must give priority to providing services to children, youths, and their families who are not normally served by state or local education agencies, or to populations that need special services such as at-risk preschoolers, children of teenage parents, youths in juvenile detention facilities, and school dropouts.

(b) Applications must target neighborhoods with high rates of violence, drug- and gang-related activities, weapons violations, truancy, and school dropouts. Applications must include a map showing the boundaries of the target neighborhood. CJD will not consider applications if they do not address the common goals stated in §3.400 (of this title relating to Source and Purpose) or are not part of a comprehensive community plan as described above. Eligible local programs are:

(1) law enforcement education partnerships, such as neighborhood patrols to ensure safe passage of students and teachers to and from school;

(2) Drug Abuse Resistance Education, CHOICES, Gang Resistance Education and Training, school resource officers, and Project Legal Lives in which prosecutors provide classroom instruction in local schools;

(3) after-school programs, to provide supervision, tutoring, and other services for at-risk students;

(4) comprehensive neighborhood drug- and violence-prevention programs, to link schools and families with community resources such as vocational and job skills training or placement and health/mental health services; and

(5) training programs, to train parents, law enforcement officers, justice personnel, school officials, and community leaders about drug and violence prevention. Examples of training are conflict resolution skills, anti-violence curricula, and self-improvement programs that enhance personal responsibility and respect for self and others.

(c) Eligible statewide programs are the Texas D.A.R.E. Institute and other training programs that address the common goal of drug- and violence-free neighborhoods. 3.410 Eligible Applicants Eligible to apply for grant funds are regional councils of governments, local units of government, universities and colleges, independent school districts, and nonprofit corporations.

§3.415. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) For local and regional projects, the Criminal Justice Division allocates money to the regional councils of governments through a formula based on population and crime rate. The COGs' executive committees and criminal justice advisory committees assign priorities to applications. The COG submits applications and priority rankings to CJD. CJD makes all final funding decisions based on eligibility and availability of funds.

(c) Funds are set aside by CJD for statewide projects. Application kits for statewide projects are available at CJD. Applications for statewide projects must be submitted to the Criminal Justice Division by the first working day in March each year. Once applications

are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.420. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on September 1 of each year. Grants may start on that date or any time after during the same fiscal year.

§3.425. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports and CJD has the funds available.

§3.430. Years of Funding.

The maximum years of funding available for a single project is five years. CJD may exempt a project from this policy if, at the end of the maximum years of funding, acceptable justification is given for why the project has not become self-sufficient, the project has shown acceptable results and continued need is documented. The executive director of CJD must approve such an exemption in writing.

§3.435. Funding Levels.

(a) For local grants, the minimum amount that may be applied for in grant funds is $5,000. If the decreasing funding ratio described in §3.440 (of this title relating to Source and Purpose) causes a continuation application to be eligible for less than that amount, then the lower amount is acceptable providing the minimum was met in the first year of funding. The maximum grant award for local projects is $200,000.

(b) For statewide grants, the minimum amount that may be applied for in grant funds is $5,000. If the decreasing funding ratio described in §3.440 (of this title relating to Source and Purpose) causes a continuation application to be eligible for less than that amount, then the lower amount is acceptable providing the minimum was met in the first year of funding. The maximum grant award for statewide projects is $400,000.

§3.440. Decreasing Funding Policy.

(a) The decreasing funding ratio provides for CJD funding of 100% of costs in the first year. The first-year grant award, regardless of previous or current funding source, sets a benchmark for all other funding decisions. In the second year the grantee is eligible for 80% of the benchmark amount; in the third year the grantee is eligible for 60% of the benchmark amount; in the fourth year the grantee is eligible for 40% of the benchmark amount; in the fifth year, the grantee is eligible for 20% of the benchmark amount. CJD will not consider any project for sixth- or subsequent-year funding unless the executive director of the Criminal Justice Division, under unusual circumstances, waives this policy in writing.

(b) Under this policy, the grantee is responsible for continuing a level of service that is, at a minimum, what it provides in the first year of funding. This is not a cash match requirement, however, and the grantee is not responsible for accounting for any funds other than those directly granted by CJD or earned as program income.

(c) Projects to regional councils of governments for planning purposes are exempt from this rule. CJD may make further exemptions of this policy for other types of projects administered by regional councils of governments, if CJD determines that continuing such a project is crucial for the region.

§3.450. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Service), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.480. Indirect Costs.

Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs.

§3.485. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

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

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Victims of Crime Act Fund

1 TAC §§3.500, 3.505, 3.510, 3.515, 3.520, 3.525, 3.530, 3.535, 3.540, 3.545, 3.550, 3.555, 3.560, 3.570, 3.580, 3.585

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc6] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.500. Source and Purpose.

The Victims of Crime Act of 1984, as amended, 421 USC 10601 et seq. authorizes the VOCA grant program under Public Law 98-473, title II, chapter XIV. The Office of Victims of Crime in the United States Department of Justice provides an annual formula grant to Texas. The program provides funds to operate projects with the primary mission of providing assistance and services directly

to victims of crime. These services do not include monetary compensation or financial assistance. VOCA provides funding for programs that provide victims with the assistance and services necessary to speed their recovery from a criminal act and aid them in the criminal justice process.

§3.505. Eligible Projects.

(a) Grantees may use VOCA funds only to provide services to victims of crime that address the aftermath of the crime. Services to victims of crime means those activities that directly benefit individual crime victims. Activities unrelated or marginally related to the provision of direct services to victims are ineligible for funding.

(b) CJD requires projects to assist victims in seeking available benefits under the Texas Crime Victims Compensation Act. Projects must also demonstrate that they will provide appropriate assistance to victims of crime as soon as possible after the crime occurs to reduce the severity of the psychological consequences; improve the victim's willingness to cooperate with the criminal justice process, and restore the victim's faith in the criminal justice system.

(c) CJD recognizes the variations in existing project models. CJD, therefore, does not require grantees to provide victim assistance immediately after the occurrence of a crime in order to remain eligible for grant funding.

(d) CJD allocates at least 10% of all available VOCA funds to six project categories that provide assistance and services directly to victims of crime. All applications must address at least one of the following categories:

(1) victims of sexual assault;

(2) victims of spousal abuse;

(3) victims of child abuse;

(4) previously under-served populations of victims of violent crime, which include survivors of victims of homicide; victims of physical assault other than sexual assault, spousal abuse, and child abuse; families of kidnapped children if the kidnapping can be confirmed as an act of violent crime, as distinguished from violation of a court order relating to parental custody; victims of stalking; victims of theft resulting in significant hardship, victims of burglary of a habitation, and victims of robbery; and victims of abuse of the elderly;

(5) other victim assistance, including any combination of paragraphs (1)-(4) of this subsection; and projects assisting victims of other types of crime; and

(6) comprehensive victim assistance, including projects that provide assistance to victims of all types of crime.

(e) Activities that are ineligible for grant funding include:

(1) Crime prevention activities, other than those prevention efforts specifically included in providing emergency assistance immediately after the victimization, and other activities intended to educate the community about the prevention of crime and to raise the public's consciousness regarding crime are ineligible.

(2) Advocacy for particular legislation or administrative reform or to influence the outcome of an election is ineligible. Programs that focus primarily on lobbying or raising public awareness concerning a particular issue or cause do not qualify as direct services to crime victims and therefore are ineligible.

(3) Activities that are directed at prosecuting an offender or general criminal justice agency improvements or programs where crime victims are not sole or primary beneficiaries are ineligible.

(4) Witness management or notification programs are ineligible. Victim/witness assistance programs that provide both victim services and witness notification services can receive funding support only for that portion of the program that provides direct services to crime victims.

(5) Programs that provide rehabilitation and counseling to the perpetrator of the crime are ineligible. In addition, VOCA funds cannot support services to incarcerated individuals, even when the service pertains to the victimization of that individual.

(6) Transitional living programs are ineligible.

(7) Legal assistance and representation in civil matters are ineligible, except obtaining protective orders, elder abuse petitions, and child abuse petitions.

(8) Services and assistance to victims to address the following needs, regardless of whether they are the result of victimization, are ineligible activities: tutorial programs for children, job skills training, parenting skills training, and alcohol/drug abuse treatment.

(9) Providing training to persons or groups outside the applicant organization is ineligible. The grantee may invite staff members from other organizations to attend training activities held for the subrecipient's staff, if the VOCA-funded project incurs no additional costs.

(10) Projects that serve both victims and nonvictims must reasonably prorate their costs to ensure that VOCA funds are used only for victim services.

(11) The development, conduct, and publication of needs assessments, surveys, evaluations, studies, research efforts, training manuals, and protocols are ineligible. This restriction does not preclude the development, publication, or purchase of pamphlets, brochures, etc., designed to train staff members and volunteers or to inform victims of their rights, about procedures for obtaining services and relief within the agency, or about the criminal justice system, or literature that is rehabilitative in nature.

(12) Fund raising or any activities related to fund raising are ineligible.

(13) Community education and awareness programs, other than publicizing available services, are ineligible.

(14) Victim assistance programs that use impact panels, where perpetrators and crime victims meet for confrontation/impact/perpetrator behavior modification, may not include such activities in the grant project.

(15) Court Appointed Special Advocate (CASA) programs may not include in the grant any activities and related costs for searching for relatives who may be prospective adoptive parents. In addition, CJD will not approve activities or costs associated with homemaker services provided to the child and family after final court placement.

(16) In victim assistance grant projects, mediation between crime victims and perpetrators and restitution by the perpe-

trator are eligible only when the mediation is one-on-one and only when restitution is paid to the victim.

(17) Grantees may not use funds for any expense or service that is readily available at no cost to the grant project or that is provided by other federal, state, or local funds, or by the Texas Crime Victim Compensation Program.

(18) Cash payments to victims, for any reason, and cash expenditures of grant or matching funds, for the following purposes, are not allowable: employment agency fees; forensic medical examination for sexual assault victims; fund raising; liability insurance on buildings and vehicles; major maintenance of buildings; newsletters, including supplies, printing, postage and time; program design or evaluation; public information, except as specifically authorized for recruiting, for publicizing the availability of services, and for distributing literature to victims to aid in their recovery; and travel to national meetings.

§3.510. Eligible Applicants.

Eligible to apply for grant funds are local units of governments, state agencies, nonprofit corporations, and native American tribes.

§3.515. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after the deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

§3.520. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on July 1 of each year.

§3.525. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports and CJD has the funds available.

§3.530. Years of Funding.

There is no maximum number of years that a project can be funded.

§3.535. Funding Levels.

The minimum amount that may be applied for in grant funds is $5,000. The maximum amount that may be applied for is $55,000.

§3.540. Match Policy.

(a) All grantees, other than native American tribes, must provide a 25% match. Native American tribes must provide a five percent match. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

(b) Under this policy, the grantee agency is responsible for the required cash or in-kind match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) If the grantee uses in-kind contributions to satisfy any part of the match requirement, the following guidelines apply:

(1) Limit in-kind contributions shown in the grant application and subsequent grant accounting records to the items and amounts necessary to meet minimum grant-matching requirements.

(2) In-kind contributions may consist of volunteer time, professional services, travel, building space, nonexpendable equipment, materials, and supplies contributed within the grant period to the grantee by a third party.

(3) An in-kind contribution may include depreciation and use fees for buildings or equipment before the start of the grant period and used in the grant project. Such fees qualify as an in-kind contribution only when based on established cost and depreciation records maintained by the grantee.

(4) Grantees are required to maintain records of all in-kind contributions to reflect a full description of the item or service; the area, expressed in square feet, if the item is building space; the name of the contributor; the date when the contribution was made; the fair market value of the contribution and how the value was determined; and in the case of a discount given, the contributor's signature on an affidavit of worth and a statement that the discount is based on the nature of the program and is not available to the general public.

§3.545. Personnel.

(a) In addition to the requirements of §3.3045(of this title relating to Personnel), no more than 25% of personnel or personnel time, both paid and volunteer, can be spent on tasks other than direct-service delivery. These tasks include administration and support. Nonprofit corporations are exempt from the rule on supplanting of staff members stated in §3.3045 (of this title).

(b) A minimum of 520 hours per year of volunteer time is required.

§3.550. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Services), the grantee may use grant funds or matching funds to pay counselors, including psychiatrists, psychologists, therapists, and facilitators for services on a case-by-case, fee-for-service arrangement. Salaried full-time or part-time staff, however, must provide a majority of services on the grantee premises.

§3.555. Transportation, Travel, and Training.

In addition, to the general policies in §3.3055 (of this title relating to Transportation, Travel, and Training), all out-of-state travel requires a 50% cash match.

§3.560. Equipment.
In addition, to the general policies in §3.3060 (of this title relating to Equipment), all equipment must be purchases entirely with the grantee matching funds.

§3.570. Program Income.
VOCA projects may not earn program income.

§3.580. Indirect Costs.
Indirect costs are an ineligible expense and grant funds for this purpose will not be awarded to any grantee.

§3.585. Progress Reports.
Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds and grantee match. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The report is due 20 days after the end of each three month reporting period. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

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

Issued in Austin, Texas on September 24, 1996.

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

Crime Stoppers Assistance Fund

1 TAC §§3.600, 3.605, 3.610, 3.615, 3.620, 3.625, 3.630, 3.635, 3.640, 3.645, 3.655, 3.660, 3.680, 3.685, 3.690, 3.695

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc7] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.600. Source and Purpose.
The Crime Stoppers Assistance Fund was established by article 102,013, Texas Code of Criminal Procedure. It provides funds for certified Crime Stoppers programs in Texas. CJD intends the funding to enhance and assist the community's efforts in solving crimes. Crime Stoppers programs are responsible for all administrative cost associated with the local operation. It is recognized that fundraising and in-kind contributions may not always yield the proceeds necessary to accomplish this goal. Programs are encouraged to apply for assistance on an as needed basis. It is a goal of the program to create a trilateral partnership of the public, law enforcement agencies, and the media that accelerates the identification and apprehension of those involved in crimes.

§3.605. Eligible Projects.
(a) Certified programs may apply for CJD funds to provide operational costs, promotional and publicity material, equipment, and special innovative projects that will enhance the objectives of the program and directly increase productivity. Innovative concepts should increase the public awareness of Crime Stoppers, promote donations to the reward and operating funds, increase tips, and enhance the overall effectiveness of the program.

(b) There are several ineligible projects and activities. Projects or expenses not eligible for grant funding include, but are not limited to: travel expenses; paid promotional advertisements of any kind; office space rental; extended equipment services arrangements; contributions; subscription fees or dues; entertainment or refreshments; purchase or improvement of real estate; rewards; lobbying for the passage or defeat of any legislation, elections, or administrative reform; attorney fees; and personnel.

§3.610. Eligible Applicants.

Eligible to apply for grant funds are certified local Crime Stoppers programs.

§3.615. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment if applicable to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

§3.620. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on November 1 of each year.

§3.625. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter, all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.630. Years of Funding.

There is no maximum number of years that a program can be funded.

§3.635. Funding Levels.

The minimum amount that may be applied for in grant funds is $1,000. The maximum amount that may be applied for is $10,000.

§3.640. Match Policy.

(a) Programs that are in their first or second year of funding need not provide a cash match except on equipment. Programs in their third and subsequent years of funding must provide a match that

is equivalent to the total amount of the grant award. This requirement must be satisfied through cash contributions only. The Criminal Justice Division may waive the match requirement if the applicant can adequately demonstrate that the project will benefit Crime Stoppers on a statewide basis. Grants to conduct a Crime Stoppers training conference have no cash match requirement.

(b) Under this policy, the grantee agency is responsible for the required cash match and must identify the source of the match in the grant application. All required and approved grantee match funds must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

§3.645. Personnel.

Grant funds or required cash match may not be used to pay for personnel.

§3.655. Transportation, Travel, and Training.

Grant funds or required cash match may not be used to pay for transportation, travel, or training.

§3.660. Equipment.

In addition to the general policies in §3.3060 (of this title relating to Equipment), the grantee must provide a dollar-for-dollar cash match for all equipment.

§3.680. Indirect Costs.

Indirect costs are an ineligible expense and CJD will not award grant funds for this purpose to any grantee under this fund.

§3.685. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due monthly. Failure to meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

(b) Under the Crime Stoppers Assistance Program, CJD requires grantees to provide statistics at inception, current annual statistics, and achievements each month. Reporting categories include: suspects arrested; offenses cleared; number of rewards paid; amount of rewards paid; dollar value of stolen property recovered; dollar value of narcotics recovered; and disposition of each tip transmitted to the individual program by Texas Crime Stoppers.

§3.690. Compliance Requirements.

To be eligible for funding, a grantee must be a certified Crime Stoppers program and remain in good standing according to certification requirements set by the Texas Crime Stoppers Advisory Council and approved by the Criminal Justice Division.

§3.695 Expense Reimbursement.

Under the Crime Stoppers Assistance Fund, CJD will disburse grant funds only on a cost-reimbursement basis, once each quarter. CJD requires grantees to attach a completed grantee request for funds form to the quarterly financial expenditure report.

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

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Pete Wassdorf
Deputy General Counsel
Office of the Governor
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For further information, please call: (512) 475-2595

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Texas Narcotics Control Program

1 TAC §§3.700, 3.705, 3.710, 3.715, 3.720, 3.725, 3.730, 3.735, 3.740, 3.760, 3.770, 3.780, 3.785

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc8] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.700. Source and Purpose.

The source of funds is the federal Anti-Drug Abuse Act of 1988, which allows for a funding allocation to Texas to enforce state and local controlled substances laws and to improve the functioning of the criminal justice system, with an emphasis on violent, drug, and other serious offenders.

§3.705. Eligible Projects.

All projects must meet at least one of the following purpose areas. CJD will not consider other types of programs.

(1) Multijurisdictional, multicounty task force programs that integrate federal, state and local drug law enforcement agencies and prosecutors for the purpose of enhancing interagency coordination and intelligence and facilitates multijurisdictional investigations.

(2) Providing community and neighborhood programs that assist citizens in preventing and controlling crime, including special programs that address the problems of crimes committed against the elderly and special programs for rural jurisdictions.

(3) Improving the operational effectiveness of law enforcement through the use of crime analysis techniques, street sales enforcement, school yard violator programs, and gang related and low income housing drug control programs.

(4) Career criminal prosecution programs, including the development of model drug control legislation.

(5) Financial investigation programs that target the identification of money-laundering operations and assets obtained through illegal drug trafficking, including the development of proposed model legislation, financial investigative training, and financial information sharing systems.

(6) Improving the operational effectiveness of the court process by expanding prosecution, defender, and judicial resources and by implementing court delay-reduction programs.

(7) Criminal justice information systems, including automated fingerprint identification systems, to assist law enforcement, prosecution, courts and corrections organizations.

(8) Innovative programs that demonstrate new and different approaches to the enforcement, prosecution, and adjudication of drug offenses and other serious crimes.

(9) Drug control evaluation programs that state and local units of government may use to evaluate projects directed at state drug-control activities.

(10) Providing alternatives to prevent detention, jail, and prison for persons who pose no danger to the community.

(11) Improving or developing forensic laboratory capability to analyze DNA samples.

§3.710. Eligible Applicants.

Eligible to apply for grant funds are local units of government, universities and colleges, independent school districts, state agencies, and native American tribes with law enforcement functions.

§3.715. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for applications and for application kits. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions. CJD bases decisions on eligibility and the geographic area's need for services.

(c) Application kits for statewide projects are available at CJD. Applications must be submitted to the Criminal Justice Division. Once applications are received, staff members selected by the CJD executive director review applications for eligibility and cost-effectiveness and rate them competitively.

§3.720. Grant Period.

Grants are generally funded for a 12-month period. Grants funds are available on June 1 of each year.

§3.725. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.730. Years of Funding.

In general, the maximum years of funding available for a single project is four years. CJD exempts multijurisdictional task forces from this policy.

§3.735. Funding Levels.

In general, the minimum amount that may be applied for in grant funds is $5,000. There is no maximum grant award.

§3.740. Match Policy.

(a) Grantees must provide a 25% cash match. This requirement must be satisfied through cash contributions only. Additional match requirements may be imposed in budget schedule policies.

(b) Under this policy, the grantee agency is responsible for the required cash match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

§3.760. Equipment.

In addition to the general policies in §3.3060 (of this title relating to Equipment), the grantee may use only 20% of the total grant award for equipment purchases. CJD will not approve funds for military vehicles, weapons, or explosives. Criminal Justice Information Systems projects are exempt from this policy.

§3.770. Program Income.

In addition to the policies in §3.3070 (of this title relating to Program Income), projects must submit a written request to carry program income forward from one grant year to the next. Drug law enforcement units must also fulfill a special condition requiring a formal written agreement or contract with the appropriate district attorneys in the service area of the project. Such an agreement or contract must provide that all property and funds seized by the drug law enforcement unit and subsequently forfeited must revert to the CJD-funded project as program income to further project goals and objectives. Such an agreement or contract must be valid through the grant period, or until the drug law enforcement unit has recovered through forfeiture proceedings an amount equal to the total amount funded by the grant.

§3.780. Indirect Costs.

Indirect costs are an ineligible expense under this fund. CJD will not approve the use of any grant funds for this purpose.

§3.785. Progress Reports.

(a) Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The first progress report is due 20 days following the end of the first quarter of the grant period. The final progress report is due 20 days following the end of the grant period. Failure to

meet these deadlines will result in CJD placing an automatic financial hold on the grantee.

(b) Reporting requirements include:

(1) Progress reports. Non-task-force grant projects must submit to CJD a quarterly report of the project's progress and achievements. Grantees must design an evaluation plan that will measure the effectiveness of the project. TNCP will provide the necessary report forms to the grantees. The required submission date for this report is the 20th day of the month following the end of each quarter.

(2) Narcotics activity reports. All task force grant projects must submit quarterly narcotics activity reports to CJD. The design of the form is subject to change at the discretion of CJD. The required submission dates for this report is the 20th day of the month following the end of each quarter.

(3) Major enforcement action reports. This report highlights the major accomplishments of task force-related and grant-funded projects. It should include the details of the action.

(4) Immigration and Naturalization Service reporting requirement. The grantee must meet the reporting requirements of §507 of the Immigration Act of 1990 (Public Law 101-649), amending section 503(a) of the Omnibus Crime Control and Safe Streets Act of 1968, 42 USC 3753(a). The reporting requirements include additional data elements such as "place of birth" and "citizenship and alien identification number." The arresting agency provides these data in the identification and arrest segment of the new Texas Department of Public Safety/Criminal Justice Information System (DPS/CJIS) tracking incident form, fingerprint card, and supplemental form.

(5) Criminal intelligence operation policies. The grantee must comply with the requirements of the Criminal Intelligence System Operating Policies, 28 CFR, part 23. The grantee must provide a certification that each project conforms with the operating policies set forth at 28 CFR, subsection 23.20, and is eligible under the funding guidelines set forth at 28 CFR, subsection 23.30. The grantee further agrees to provide specialized monitoring and audit of such projects pursuant to 28 CFR, subsection 23.40(a).

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

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Violence Against Women Act Fund

1 TAC §§3.900, 3.905, 3.910, 3.915, 3.920, 3.925, 3.930, 3.935, 3.940, 3.945, 3.950, 3.955, 3.960, 3.970, 3.980, 3.985

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc9] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.900. Source and Purpose.

The source of funds is the Violence Against Women Act (VAWA) set out in Title IV, §40121 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, which allows for funds to provide personnel, training, and technical assistance for the more widespread apprehension, prosecution, and adjudication of person's committing violent crime against women.

§3.905. Eligible Projects.

All projects must meet at least one of the following project types. CJD will not consider other types of programs.

(1) Training law enforcement officers and prosecutors to more effectively identify and respond to violent crimes against women, including sexual assault and domestic violence.

(2) Developing, training, or expanding specialized units of law enforcement officers and prosecutors targeting violent crimes against women, including sexual assault and domestic violence.

(3) Developing, enlarging, or strengthening victim service programs, including sexual assault and domestic violence programs; developing or improving delivery of victim services to racial, cultural, ethnic, and language minorities; providing specialized domestic violence advocates in courts where a significant number of protection orders are granted; and increasing reporting and reducing attrition rates for cases involving violent crime against women, including sexual assault and domestic violence.

§3.910. Eligible Applicants.

Eligible to apply for grant funds are state agencies, nonprofit organizations, local units of governments, and Native American tribes.

§3.915. Submission and Selection Process.

(a) All applicants must submit their applications for local or regional grants directly to the appropriate regional council of governments (COG). Applicants should call or write their COG for the correct deadline for submission of applications. Applications received after deadline will not be considered.

(b) The councils of governments' executive committees and their criminal justice advisory committees review and give a priority assignment to each application. The councils of governments then submit applications and priority rankings to the Criminal Justice Division. There is no set funding allocation to the COGs under these funds. CJD takes the priority rankings of the COGs into account, but is ultimately responsible for making all funding decisions.

(c) CJD will award grants to projects that demonstrate the greatest need based on the availability of existing domestic violence and sexual assault programs in the population and geographic area of the project. CJD will also give priority to the projects that address the needs of unserved, underserved, and special populations.

(d) CJD will allocate 25% VAWA funds to law enforcement, 25% to prosecution, 25% to victim service, and 25% to other discretionary projects.

§3.920. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on June 1 of each year.

§3.925. Continuation Funding Policies.

There is no commitment on the part of the Office of the Governor that a grant, once funded, will receive priority consideration for subsequent funding. CJD will fund local continuation projects only if the project is eligible under a community plan; the project is recommended in a COG's regional plan; the project is eligible for funding in accordance with the requirements set forth in this chapter; all administrative, program, and financial requirements are complete; the grantee has a history of timely progress and financial reports; and CJD has the funds available.

§3.930. Years of Funding.

There is no maximum number of years that a project can be funded.

§3.935. Funding Levels.

The minimum amount that may be applied for in grant funds is $5,000. The maximum amount that may be applied for is $40,000.

§3.940. Match Policy.

(a) All grantees, except nonprofit and nongovernmental victim services programs, must provide a 25% match. This requirement may be satisfied through cash contributions, in-kind contributions, or a combination of the two.

(b) Under this policy, the grantee agency is responsible for the required cash or in-kind match and the source of the match must be identified in the grant application. All required and approved grantee matches must comply with the same rules and guidelines that apply to the CJD-funded portion of the grant.

(c) A contractor may contribute toward the cash-match requirement, but the final responsibility for the match rests with the grantee. In addition, grantees may use any cash received through legal asset forfeiture toward grantee cash match requirements.

(d) Except for funds under the federal Housing and Community Development Act of 1974 and the General Revenue Sharing Act, applicants may not use federal and state grant funds as match.

(e) If the grantee uses in-kind contributions to satisfy any part of the match requirement, the following guidelines apply:

(1) Limit in-kind contributions shown in the grant application and subsequent grant accounting records to the items and amounts necessary to meet minimum grant-matching requirements.

(2) In-kind contributions may consist of volunteer time, professional services, travel, building space, nonexpendable equipment, materials, and supplies contributed within the grant period to the grantee by a third party.

(3) An in-kind contribution may include depreciation and use fees for buildings or equipment before the start of the grant period and used in the grant project. Such fees qualify as an in-kind contribution only when based on established cost and depreciation records maintained by the grantee.

(4) Grantees are required to maintain records of all in-kind contributions to reflect a full description of the item or service; the area, expressed in square feet, if the item is building space; the name of the contributor; the date when the contribution was made; the fair market value of the contribution and how the value was determined; and in the case of a discount given, the contributor's signature on an affidavit of worth and a statement that the discount is based on the nature of the program and is not available to the general public.

§3.945. Personnel.

(a) In addition to the requirements of §3.3045 (of this title relating to Personnel) , the grantee may spend no more than 25% of personnel or personnel time, both paid and volunteer, on task other than direct-service delivery. These task include administration and support. Nonprofit corporations are exempt from the rule on supplanting of staff members stated in §3.3045 (of this title).

(b) A minimum of 520 hours per year of volunteer time is required.

§3.950. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Services), the grantee may use grant funds or matching funds to pay counselors, including psychiatrists, psychologists, therapists, and facilitators for services on a case-by-case, fee-for-service arrangement. Salaried full-time or part-time staff, however, must provide a majority of services on the grantee premises.

§3.955. Transportation, Travel, and Training.

In addition, to the general policies in §3.3055 (of this title relating to Transportation, Travel, and Training), all out-of-state travel requires a 50% cash match.

§3.960. Equipment.

In addition, to the general policies in §3.3060 (of this title relating to Equipment), all equipment must be purchased entirely with the grantee matching funds.

§3.970. Program Income.

VAWA projects may not earn program income.

§3.980. Indirect Costs.

Indirect costs are an ineligible expense and CJD will not award grant funds for this purpose to any grantee.

§3.985. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due quarterly. The report is due 20 days after the end of each three month reporting period. Failure to meet these deadline will result in CJD placing an automatic financial hold on the grantee.

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

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Challenge Grants

1 TAC §§3.1000, 3.1005, 3.1010, 3.1015, 3.1020, 3.1025, 3.1030, 3.1035, 3.1050, 3.1060, 3.1080, 3.1085, 3.1090

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc10] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.1000. Source and Purpose.

Part E of the federal Juvenile Justice and Delinquency Prevention Act provides supplemental funds for challenge grants, provided that the state uses the funds to address one or more of the authorized activities referenced in §3.1005 (of this title relating to Eligible Projects).

§3.1005. Eligible Projects.

(a) The first eligible activity is to develop and adopt model policies and programs designed to serve as alternatives to suspension or expulsion from school, while placing emphasis on early identification of violent juveniles.

(b) The second eligible activity is to develop and adopt policies and programs to provide basic health, mental health, and appropriate education services, including special education, for youths in the juvenile justice system.

§3.1010. Eligible Applicants.

Eligible applicants for the first challenge activity set forth in §3.1005 (of this title relating to Eligible Projects), are independent school districts that have the highest reported incident of crime, as determined by Texas Department of Public Safety survey data, as provided in Senate Resolution 879 of the 73rd Legislature. Eligible applicants for the second challenge activity set forth in §3.1005 (of this title) are counties with populations over 125,000.

§3.1015. Submission and Selection Process.

(a) Applicants submit their applications directly to the Criminal Justice Division. Applications are rated by staff members and other persons designated by the executive director of CJD. The governor makes all final funding decisions.

(b) CJD will notify all applicants of the final outcome of their grant application.

(c) Members of the Governor's Juvenile Justice Advisory Board are given the opportunity to review and comment on all applications.

§3.1020. Grant Period.

Grants are generally funded for a 12-month period. Grants are available on September 1 of each year.

§3.1025. Continuation Funding Policies.

Except under unusual circumstances, continuation projects will not be considered.

§3.1030. Years of Funding.

Challenge grants are typically awarded for a maximum of one year of funding.

§3.1035. Funding Levels.

(a) The maximum amount for a grant under challenge activity one referenced in §3.1005 (of this title relating to Eligible Projects) is $470,000.

(b) The maximum amount for a grant under challenge activity two references in §3.1005 (of this title) is $217,000.

§3.1050. Professional and Contractual Services.

In addition, to the general policies in §3.3050 (of this title relating to Professional and Contractual Services), CJD will only provide funds for up to 50% of the costs for the design, development, or procurement of computer hardware and software.

§3.1060. Equipment.

In addition, to the general policies in §3.3060 (of this title relating to Equipment), CJD will only provide funds for up to 50% of the costs of equipment purchases. Grantees may only make such purchases in the first year of funding.

§3.1080. Indirect Costs.

Applicants without an approved cost allocation plan may receive indirect costs in an amount not to exceed a total of two percent of the total direct costs awarded by CJD. Applicants with an approved cost allocation plan may use it to determine the allowable indirect costs.

§3.1085. Progress Reports.

Each grantee must submit progress reports in accordance with the instructions provided by and in the form prescribed by CJD. The grantee must submit reports only for those activities supported by CJD grant funds, grantee match, and program income. The project director of the grant must sign all progress reports. Progress reports are due twice a year. The first progress report is due 20 days following the end of the sixth month of the grant period. The final progress report is due 20 days following the end of the grant period.

§3.1090. Compliance Requirements.

To remain eligible for funds, grantees must remain in compliance with Title 3, §§51.12, 52.025, 52.027, and 52.028, 54.011 and 54.05 Texas Family Code, regarding appropriate detention of accused juvenile offenders and with §511.009(a), Government Code, regarding law enforcement agencies to submit annual reports to the Texas Commission on Jail Standards, with respect to detention of juveniles in adult jails and lockups.

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

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Subchapter C. General Grant Program Policies

General Eligibility Requirements

1 TAC §§3.2000, 3.2005, 3.2010, 3.2015

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc11] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.2000. Community Plans.

(a) The Criminal Justice Division will determine the eligibility of local and regional applications based on whether or not agencies and citizens work together as part of an overall community plan to address identified problems.

(b) The plan must reflect the participation of the whole community, including representatives of public agencies, private nonprofit organizations, education, health, mental health, juvenile justice, criminal justice, child welfare, law enforcement, the private sector, community associations, economic development, and concerned citizens.

(c) Plans must target specific problems of concern and identify a variety of resources that the community will use to address them. CJD funds may be applied for to fill the gaps in services identified in the community plan.

(d) A plan should target one or more communities. A city, county, or region may submit multiple as long as there is no actual overlap in the plans' target areas. The criminal justice planners at the regional councils of governments working with local officials must ensure that there is no duplication and that all plans and projects work together.

(e) The plan should identify the strategies and goals for each identified problem. Planning must be performed by the multidisciplinary team identified in subsection (b) of this section and must address each of the following steps:

(1) Identify the community's problems and gaps in services. Statistical data must demonstrate the extent of the problems. Problems should be specific and narrow in scope so that the plan shows a proper use of resources.

(2) Identify all possible resources that can be used to address the identified problems and explain their uses in developing a creative and comprehensive strategy. The plan should provide for community-wide cooperation in a comprehensive approach to solving local problems.

(3) Identify gaps in services. Once the plan is written, gaps in existing resources should be identified. The planning group should examine the gaps with potential grant funding in mind. The plan must also identify new types of projects that would enhance the community's effort. Communities may submit applications for these projects in response to the community plan to the regional council of governments.

(f) Community planning groups must reapprove or revise the community plan at least annually and place that current plan on file with the appropriate regional council of governments. The councils of governments will set deadlines for plan submissions each year.

§3.2005. Juvenile Justice and Youth Projects.

(a) All juvenile justice projects, regardless of funding source, must address overrepresentation of minority youths in the juvenile justice system. CJD will require this component if, within the applicant's jurisdiction, minority youths are detained or confined in secure facilities in greater proportion than the proportion of such youths in the court-age population as a whole. Court age population is defined as all children 10 to 16 years old.

(b) All juvenile projects must address at least one of the priority needs recommended by the Governor's Juvenile Justice Advisory Board and adopted by the Criminal Justice Division, Office of the Governor. They are as follows:

(1) There is a need for emphasis on early identification of violent juveniles and early intervention to curtail criminal behavior. The juvenile justice system needs better balance; the system concentrates most of the resources on the "back end." There are insufficient resources applied to early intervention. Research indicates that professionals can identify the traits of potential career criminals at the time of the first offense. Identifying first-time offenders with a pattern of traits including disciplinary problems in school, child abuse, parental neglect, and drug, alcohol, or inhalant abuse makes it possible to focus intensive efforts on turning these juveniles around before they become habitual offenders.

(2) There is a need to reduce violent youth crimes. We must hold juveniles accountable and responsible for their actions. Juvenile violent crimes increased 282% between 1984 and 1993. Sexual assault increased 798%; murder, 291%; aggravated assault, 242%; and robbery, 224%.

(3) There is a need to instill appropriate social values and character in children. Family dysfunction and lack of family values correlate with youth crime and need correcting. We should place emphasis on family preservation, wherever possible. Programs should also be available for those children removed from the home because of necessity. Disproportionate numbers of serious juvenile offenders come from single-parent families or families with a high degree of conflict, instability, violence, and inadequate supervision.

(4) That there are swift and certain consequences for juveniles who commit crimes and that the punishment will fit the crime.

(5) There is a need for teachers and principals to exercise their power and use their resources to deal with serious problems at school or related activities, so that they can teach and guarantee students their right to learn without disruption or fear of violence. The education and juvenile justice systems need programs that make it easier to discipline and isolate problem students and to teach them good citizenship, literacy, and job skills and then return them to the mainstream classroom.

(6) There is a need for better supervision of youths and a need for an aggressive and comprehensive approach to counteract gangs. These approaches should include increased identification, surveillance, arrest, and prosecution of gang members involved in criminal activities; increased alternatives to gang involvement; and early prevention of conditions that contribute to the growth of gangs. The public perceives disorder and social decay of families and neighborhoods to be a major factor contributing to youth crime.

(7) There is a need for increased funding for community-based programs to deter young criminals. These programs need a multiphilosophical approach. Emphasis should be on innovation and on replicating successful prevention, restitution, and gang intervention programs.

(8) There is a critical need to plan comprehensively and to involve the whole community in efforts to deal with juvenile crime. Currently, funding agencies largely fund isolated projects in local communities.

(9) There is a need to develop a computer match program and information system that will match children and families to appropriate service providers based on a risk and needs profile. Such a project should carefully maintain the match program, widely publicize it, and make it accessible to juvenile probation, schools, and

private citizens, including at-risk families. The goal of this system should be early prevention of the conditions that lead to juvenile crime.

(10) There is a need to develop programs to protect the public from and give appropriate dispositions to mentally ill and retarded youths accused of committing crimes. There is also a need to develop a standardized testing instrument to determine whether or not a youth is mentally ill or retarded.

(c) CJD will place priority on DARE and other school-based prevention projects that target their activities on middle school and junior high age youths.

(d) CJD will not approve funds for compensation to parents of participating children for attending meetings or classes.

§3.2010. Criminal Justice Projects.

CJD will limit funding for community-based alternative projects to programs that can document problems and needs not provided for by the Texas Department of Criminal Justice, the Texas Commission on Alcohol and Drug Abuse, the Texas Education Agency, or other agencies. Programs must exclude adult offenders charged with or convicted of violent crimes including murder, rape, arson, armed robbery, sexual assault, burglary, child molestation, and manslaughter. In addition, projects that target auto theft are not eligible. The appropriate source of funding for such projects is the Automobile Theft Prevention Authority in the Texas Department of Transportation.

§3.2015. Law Enforcement Agency Projects.

The Criminal Justice Division will not expend funds for projects in any law enforcement agency regulated by chapter 415, Government Code, unless the law enforcement agency requesting the grant is in compliance with all rules developed by the Texas Commission on Law Enforcement Officer Standards and Education pursuant to chapter 415, Government Code, or the Texas Commission on Law Enforcement Officer Standards and Education certifies that the requesting agency is in the process of achieving compliance with such rules.

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

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Pete Wassdorf

Deputy General Counsel

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General Grant Budget Requirements

1 TAC §§3.3045, 3.3050, 3.3055, 3.3060, 3.3065, 3.3070, 3.3075

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc12] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.3045. Personnel.

The following policies apply to all grant-funded, cash match-funded, or in-kind personnel.

(1) Salaries for CJD-funded positions must comply with the established classification system of the grantee agency. If no classification system exists, salaries for grant-paid personnel must be commensurate with those of non grant-paid personnel of similar rank and experience.

(2) The grantee must document all personnel positions with time and attendance records. These records should include the number of hours worked each day on the project, the signature of the employee, and the signature of the supervisor.

(3) Positions for less than 25% of full-time are not eligible. Councils of governments are exempt from this rule.

(4) CJD will not approve any salary increase from year to year unless the grantee provides adequate justification in the grant application. CJD will determine whether the justification provided is sufficient.

(5) Overtime pay for any personnel cannot be paid from grant funds.

(6) Staff positions that existed prior to the grant are ineligible for CJD funds.

(7) If the grantee agency transfers an existing employee to a grant position, then the agency must fill that person's original position within 120 days. The grantee's number of non-grant staff members, therefore, cannot decrease because of the grant award.

(8) If a grant-paid position becomes vacant, the grantee must fill the position within 60 days. If the grantee is unable to fill the position within 60 days, the grantee must request an extension from CJD in writing.

(9) If a grant-paid position remains vacant for any period of time, the funds in the approved budget for that purpose are lost and may not be reallocated to other budget schedules.

§3.3050. Professional and Contractual Services.

(a) An individual may not receive dual compensation from a regular employer and the retaining grantee for work performed during the same period of time even if the services performed benefit both.

(b) The contractual arrangement must be written, formal, and consistent with the grantee's usual practices for obtaining such services.

(c) The grantee must provide adequate documentation to support time and services and the rates of compensation.

(d) Transportation and subsistence costs for travel by consultants must be at an identified rate consistent with the grantee's general travel reimbursement practices.

(e) Contracts must ensure that the work or services claimed for reimbursement are directly and exclusively devoted to the grant.

(f) The grantee must advertise any ongoing contract to purchase services annually through a competitive procurement process. The grantee must also document in project records the procurement process and the criteria used to select contractors. The grantee may

extend existing contracts temporarily to continue services already underway.

(g) All contracts in excess of $15,000 require CJD approval. The grantee may submit such contracts, including sole-source justification, if applicable, with the grant application or, at the grantee's option, immediately following the grant award, but prior to the grantee's obligating or expending any funds. If the grantee chooses the latter option, it must transmit each contract including sole-source justification, if applicable, to CJD by a letter signed by the authorized official named in the grant or by the person designated in the grantee acceptance notice to initiate grant adjustments.

(h) A grantee may not expend more than the amount listed for any service included in the CJD maximum rate schedule.

(i) Any person or vendor that participates in writing an invitation for proposal or a grant application cannot benefit financially from that contract or any grant award.

(j) Grantees must disclose related party transactions, such a transaction occurs when a grantee enters into the contract with an individual or an organization to which a member of the grantee organization has a personal or business tie. An explanation of any such arrangement must be included in the grant application.

(k) Stated below are the maximum allowable rates of payment, or valuation of in-kind contributions, for selected types of personal services that may require purchase from a source external to the grantee. All professional and contractual services must be within the CJD maximum rate schedule below:

(1) Costs for individual consultants generally may not exceed $150 per day or $18.75 per hour. Under unusual circumstances, CJD will approve an additional amount per day for individual consultants. Such approval must be in advance. The rate must be based on the prevailing market rate for the type of work being performed. The payment may include actual time for preparation, evaluation, and travel, in addition to the time for the presentation. The grantee may also pay for travel and subsistence costs. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(2) Costs for consultants associated with educational institutions may not exceed the maximum daily rate, which is the consultant's annual academic salary, divided by 260. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(3) CJD will approve compensation for consultants employed by state and local governments only when the unit of government cannot provide these services without cost. In such cases, the rate of compensation is not to exceed the daily salary rate paid by the unit of government. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(4) The grantee must procure consultants employed by for profit and nonprofit corporations through competitive bidding. These costs are not subject to any maximum rate. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, Crime Stoppers Assistance Fund, and Safe and Drug-Free Schools and Communities.

(5) A full battery psychological evaluation includes a diagnostic interview and history; an individual intelligence test; an organicity-perceptual test; a wide-range achievement test; a projective and objective test; a vocational test; an aptitude test; or a review and evaluation with written narrative report by a licensed psychologist. The maximum cost per evaluation is $175. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund only, and Safe and Drug-Free Schools and Communities.

(6) Individual or family psychological counseling must be directly performed by a licensed psychologist, licensed counselor, licensed social worker, or advanced clinical practitioner. Administrative expenses and communications with family or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. The maximum cost per hour is $66. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(7) Group psychological counseling for children must have a maximum of eight members in group and session must be 1.5 hours per session. Services must be performed by a licensed psychologist, licensed counselor, licensed social worker, or advanced clinical practitioner. Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may bill as a separate and additional cost. The maximum cost per individual per session is $28. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(8) Individual or family chemical dependency counseling a licensed chemical dependency counselor or a Certified Alcohol and Drug Abuse Counselor (CADAC) must perform these services. Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. The maximum cost per hour is $47. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(9) Group chemical dependency counseling must have a maximum of eight persons in the group and the session must be 1.5 hours per session. A licensed chemical dependency counselor or a CADAC must directly perform these services. Administrative expenses and communication with family, referral source, or other agencies are part of the cost per counseling hour. The provider may not bill as a separate and additional cost. Maximum cost per individual per session is $16. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act

Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(10) Psychiatric diagnostic interviews or examinations include history, mental status, and recommended disposition. The provider must include communications with family, school, or referral source in the maximum fee. A licensed psychiatrist must directly perform these services. The maximum cost per hour is $80. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(11) Individual medical psychotherapy must be performed directly by a licensed psychiatrist. The maximum cost per hour is $70. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(12) Group medical psychotherapy must have a maximum of eight persons per group and must be one to one and one half hours per person per session. The maximum cost per hour per person is $30. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

(13) General physical examination and report by form or narrative, including routine laboratory tests and x-rays. Can be used for court-ordered residential placement only. The maximum cost per examination is $75. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(14) Emergency office calls and necessary medical treatment while a juvenile is in court-ordered residential placement. When a juvenile requires emergency services, the grantee may award contracts without competitive procurement to qualified service providers. The grantee must document in project records the nature of the emergency. Grantees may pay actual costs. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(15) Purchase of prescribed medication while a juvenile is in court-ordered residential placement. Grantees may pay actual costs. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(16) Dental examination required for court-ordered residential placement including charting history, oral visual examination, radiographs, and form completion. The maximum cost per examination is $50. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(17) Residential care for juveniles determined to need Level I care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes primary 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court in a licensed or certified foster family home, foster group home, or a basic child care institution, when the primary reason for placement is a family or home condition rather than the juvenile's behavior. Juveniles at this level of care typically need an environment that provides maintenance and ensures emotional and physical well-being in a family-oriented setting. The maximum cost per day is $18. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(18) Residential care for juveniles determined to need Level II care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes specialized 24-hour care and supervision for juveniles 10-17 years old; placed by a juvenile court, in a licensed or certified therapeutic foster family home, foster group home, or basic child care institution, when the primary reason for placement is a need for basic care plus intensive individual attention and supervision because of a physical, mental, or behavioral problem. Juveniles at this level of care need consistency, reassurance, regular parenting, and development of normalized social skills. The maximum cost per day is $42. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(19) Residential care for juveniles determined to need Level III care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes intermediate 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in a licensed or certified therapeutic foster family home; therapeutic foster group home, basic child care facility, residential treatment center, wilderness camp, halfway house, or habilitative foster family or foster group home, when the primary reason for placement is a need for basic care plus structure, educational support, a higher level of supervision, and the development of normalized social skills. The maximum cost per day is $58. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(20) Residential care for juveniles determined to need Level IV care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes therapeutic 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in a licensed residential treatment center or in a therapeutic or wilderness camp when the primary reason for placement is a severe emotional or behavioral problem resulting in the juvenile's inability to function in the home, school, or community. Juveniles at this level of care have physical, mental, and emotional needs and behaviors that may present a low to moderate risk of causing harm to themselves or others. They require physical environments and treatment programs in which most activities are therapeutically designed to improve social, emotional, and educational adaptive behavior. The juveniles may require psychological or psychiatric services that are integrated into the residential program to assess and monitor admission, discharge, and treatment plans. The maximum cost per day is $83. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(21) Residential care for juveniles determined to need Level V care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes intensive 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court, in a licensed basic child care facility, a therapeutic camp, a residential treatment center, or a substance abuse treatment facility certified by the Texas Commission on Alcohol and Drug Abuse, when the primary reason for placement is a need for treatment of severe emotional or behavior disorders or conditions that require a highly structured program to improve functioning or maintenance. Such juveniles may present a moderate to severe risk of causing harm to themselves or others. The maximum cost per day

is $101. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(22) Residential care for juveniles determined to need Level VI care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes in-patient-psychiatric 24-hour care and supervision for juveniles 10 to 17 years old; placed by a juvenile court, in an in-patient psychiatric hospital accredited by JCAH (Joint Commission for the Accreditation of Hospitals) and licensed by Texas Department of Mental Health and Mental Retardation as an in-patient psychiatric facility, when the primary reason for placement is a need for treatment of an acute or chronic emotional or behavioral disorder or condition that requires a highly structured program with 24-hour supervision to improve functioning or maintenance. Such juveniles may present a severe to critical risk of causing harm to themselves or others. The maximum cost per day is $188. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(23) Residential care for juveniles determined to need Level VII care through the use of the Texas Common Application for Placement of Children in Residential Care. Such care includes emergency shelter 24-hour care and supervision for juveniles 10 to 17 years old, placed by a juvenile court or authorized officer of the court, in a licensed emergency shelter, when the primary reason for placement is an emergency. The maximum cost per day is $91. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(24) A county may contract with another county for juvenile detention in a separate certified juvenile facility not located within an adult jail. The local juvenile board must inspect and certify the juvenile detention facility using the standards required by Title 3 of the Texas Family Code and the Texas Juvenile Probation Commission. Grantees must use the standard "Contract for Detention Services" available in the application kit. The grantee must complete the form and the authorized official and service provider must sign it. The maximum cost per day is $91. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund.

(25) The grantee may use CJD funds to contract for certified vocational training courses and for academic courses such as remedial education, special education for learning disabilities, and GED preparation for adjudicated juvenile offenders. Eligible costs for reimbursement under contract include tuition, instructional materials, tools, uniforms, and other expenses necessary for completion of the course of study and subsequent job placement. The grantee may not use CJD funds to supplant other funds for which juveniles are eligible. CJD must review and approve all costs that exceed $500 per student. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(26) The maximum cost per day for day treatment, supervision, and tracking programs is $30. Eligible under State Criminal Justice Planning Fund and Juvenile Justice and Delinquency Prevention Act Fund. Service providers must deliver all of the following supervision and services to each eligible juvenile: supervision and tracking, with at least one daily contact seven days a week; restitution, including assistance in arranging employment or community service; individual or group counseling, with at least five contact hours per week; educational services, including daily contact with the school to verify attendance, returning truants to school, and arranging tutoring; job training or placement assistance; transportation, if needed, to and from appointments required as a condition of participating in the program; family involvement, with at least weekly contact between all immediate family members and the contractor's staff; prevention services, including recreation, with at least two hours a week of supervised activity to improve skills in using leisure time, interacting with others according to accepted rules, and learning appropriate ways to display aggressive behavior; and 24-hour crisis intervention, to assist in resolving critical problems.

(27) Accounting or bookkeeping services. If an established organization provides such services, the grantee may accept the lowest responsive bid. If provided by an independent individual, then the maximum rate per hour is $18.75. Eligible under all funds.

(28) Auditing. If an established organization provides auditing, the grantee may accept the lowest responsive bid. If auditing is provided by an independent individual, the maximum rate per hour is $18.75. Eligible under all funds.

(29) Licensed attorney. The grantee may engage an attorney on a fee basis to provide training to staff and volunteers of the project engaged in delivering victim assistance. The grantee may also hire an attorney to secure protective orders, elder abuse petitions, and child abuse petitions. Where the grantee hires an attorney under the latter arrangement, the grantee must consult CJD for additional documentation required. The grantee must maintain audit records that account for the attorney's time on a case-by-case basis for services to victims. The time reflected in these records must amount to 100% of the time paid. No other attorney services are allowable as expenses of the grant project without prior CJD approval. The maximum rate per hour is $90.00. Eligible under Victims of Crime Act Fund only.

(30) Parenting education. Eligible services include parenting effectiveness training or other recognized courses of instruction. The goal of this training is to strengthen and maintain the families of children. The purpose is to prevent or control behavior that leads to suspension or expulsion, referral to juvenile court, or dropping out of school. A licensed psychologist, licensed counselor, licensed social worker, or other qualified professional trainer approved by the school district must provide these services. Maximum of ten persons per class. Cost includes all materials and instruction. Maximum cost per hour per person is $10. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, and Safe and Drug-Free Schools and Communities.

(31) Temporary child care. A grantee may provide temporary child care to accommodate those parents needing it as a direct result of project activities. Maximum cost per hour per child is $3 with a limit of $15 per day. Eligible under State Criminal Justice Planning Fund, Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, and Safe and Drug-Free Schools and Communities.

§3.3055. Transportation, Travel, and Training.

(a) The grantee must limit travel expenses to the grantee agency's established mileage and subsistence policies. If a grantee does not have an established policy, it must use state travel guidelines.

(b) All travel expenses must be supported by documentation that indicates destinations and purposes for the travel.

(c) The grantee must travel only for the purposes described in the original grant application or approved in advance by CJD through grant adjustment notices.

(d) CJD will approve travel expenses only for persons assigned to the grant project and listed in the approved budget. CJD may take into consideration unusual circumstances and may approve travel requested in exception to this policy. CJD must approve such exceptions in advance. In juvenile court programs only, travel expenses incurred to return juvenile runaways to their homes are an exception.

(e) CJD defines local travel as travel within the service area of the grant.

(f) CJD defines in-state travel as travel within Texas for purposes related to the grant project and may include reimbursement for meals, lodging, and transportation costs.

(g) Travel to points outside the state requires approval in advance by CJD through the original grant award or through a grant adjustment. CJD will make exceptions for law enforcement agencies actively involved in an investigation where out-of-state travel is immediately crucial to the investigation. In these cases, grantees should notify CJD of their action upon return and request a grant adjustment in writing.

(h) All travel must be adequately justified in the budget narrative.

(i) Grants to develop and provide training through conferences or academies may not use CJD funds or matching funds to pay for travel and subsistence for participants.

(j) Travel for training must directly relate to the delivery of services or to the central focus of the grant project. Training for administrative purposes is not allowable.

(k) Registration fees for training conferences should be reflected in the travel and training budget schedule.

(l) A person attending training funded by the grant must complete the course. If the person does not complete the course, the grantee must submit a reason in writing. If CJD does not approve the reason, the individual or the program represented is liable for repayment of expenses such as the registration fee and travel paid by grant funds.

§3.3060. Equipment.

(a) CJD defines equipment as any item with a unit cost of $500 or more unless the grantee chooses to capitalize the equipment in its own accounting records. Also considered to be equipment are computer hardware or software and training and educational films or videos, regardless of cost.

(b) CJD must approve items of equipment individually through the original grant application or in subsequent grant adjustment notices prior to purchase. CJD will base authorization on the grantee's demonstration that the requested equipment is necessary and essential to the successful operation of the grant project.

(c) Equipment is an eligible expense only if it is part of a project that includes a staff. CJD may make exceptions in the cases of grants for innovative technology used in the investigation of crime.

(d) The grantee must use equipment only for the intended grant-related purposes, never for personal reasons.

(e) All equipment purchases in excess of $15,000 require CJD approval as part of the special condition on equipment review and approval. A copy of this special condition is available in the application kit.

(f) CJD will not fund vehicles and law enforcement equipment that are standard department issue including weapons, patrol vehicles, and other equipment that is used by all law enforcement officers and is not required specifically for the purposes of the grant funded project.

§3.3065. Supplies and Direct Operating Expenses.

(a) CJD defines supplies and direct operating expenses as those directly related to the day-to-day operation of the grant project and not included in the other budget categories. Allowable expenses include such items as office rent, utilities, office supplies, vehicle operating expenses, fidelity bonds, paper, printing, postage, classroom instructional supplies, production costs for public service announcements, educational resource materials, Yellow Page listings, vehicle leases, confidential funds, and emergency clothing purchases for juveniles referred to court, up to $150 per juvenile.

(b) CJD will not approve funds for project promotion through paid advertisements or for promotional gifts, such as matchbooks, bumper stickers, pens, T-shirts, or hats.

(c) CJD may approve the lease of vehicles for law enforcement purposes only. These vehicles must be undercover or unmarked, or must be vehicles normally associated with organized crime control units, drug units or specialized units with similar functions. Lease-purchase of vehicles is not allowed.

(d) The grantee may use confidential funds for three types of law enforcement operations only: They are purchase of services for confidential investigative expenses, purchase of evidence, and purchase of specific information. Any projects funded by CJD that include the expenditure of confidential funds must strictly comply with all requirements governing use of confidential funds. The Office of Justice Programs sets these requirements in the OJP Financial Guide (Paragraph 62. Confidential Funds, and Appendix 7, Control and Use of Confidential Funds). Additionally, CJD applies a special condition to all grants involving the expenditure of confidential funds. A copy of this special condition is available in the application kit.

§3.3070. Program Income.

(a) CJD defines program income as all fees, including asset seizures and forfeitures, bond forfeitures, interest income, royalties, and registration fees, generated by services, activities, or products provided through the grant project. CJD does not consider cash contributions, donations, restitution, and CJD funds as program income. The grantee must reflect all amounts earned as program income during the grant period on quarterly financial expenditure reports.

(b) When program income is from funds forfeited or property forfeited and liquidated, the grantee must use funds for law enforcement activities funded by the grant. Under unusual circumstances, CJD may give approval to use it for other purposes.

(c) Grantees must request, in writing, one of the following options for the use of program income. CJD must approve, in advance, any use of program income. The only uses that CJD will approve are:

(1) The grantee may add program income to existing funds to use for purposes that further eligible program objectives. This option is the only possible use of funds under grants funded from Fund 421 or JJDP Act funds.

(2) The grantee may use program income as cash match. In this case, the grantee must identify this proposal in the grant application and CJD must approve it. Only TNCP projects do not need to receive advance approval to use this option.

(3) The grantee may use program income to lower the CJD portion of the grant project. To determine the amount of the reduction, subtract the program income from the total project costs.

(d) If CJD no longer funds the grant and the grantee does not continue project activities, then the grantee must liquidate any forfeited property at auction. The grantee must then refund all accumulated program income and confidential funds to CJD in the proportion of CJD funding. In some cases, CJD may require that the CJD share of program income and property be transferred to another grantee.

§3.3075. Funding Limitations.

CJD will not approve funds for construction, land acquisition, or supplantation of federal, state, or local funds supporting existing programs or activities. In addition, CJD will not fund a project for the primary purpose of building renovation, other than in the cases listed in §3.165 (of this title relating to Renovation and Retrofitting). Additionally, no grantee may use CJD funds, matching funds, or program income to purchase food, meals, beverages, or other refreshments for meetings or program participants.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614086
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Special Conditions and Required Documents

1 TAC §§3.4000, 3.4005, 3.4010, 3.4015, 3.4020, 3.4025, 3.4030, 3.4035, 3.4040, 3.4045, 3.4050, 3.4055, 3.4060, 3.4065, 3.4070, 3.4075, 3.4080, 3.4085, 3.4090, 3.4095, 3.4100, 3.4105, 3.4110, 3.4115, 3.4120, 3.4125, 3.4130, 3.4135, 3.4140

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc13] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.4000. Community plan eligibility form.

All requests for local and regional funding must be accompanied by this form along with a list of participants in the planning process. Community plans are fully discussed in §3.2000 (of this title relating to Community Plans).

§3.4005. Current statistical report.

All applications for Crime Stoppers Assistance projects must include a copy of their current statistical report. In addition, applicants should include a fundraising and marketing plan that demonstrates anticipated productivity.

§3.4010. Equal employment opportunity program certification.

All applications in excess of $25,000 under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that an agency that employs 50 or more people and has received or applied to the Criminal Justice Division, Office of the Governor for funds in excess of $25,000 has an equal employment opportunity program in accordance with 28 CFR 42.301 et seq., Subpart E.

§3.4015. Certification regarding lobbying.

All applications in excess of $100,000 under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that:

(1) no federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grants, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

(2) if any non-federal funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of an agency, a member of Congress, and officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan, or cooperative working agreement, the undersigned shall indicate and complete and submit the standard form "Disclosure Form to Report Lobbying," in accordance with its instructions; and

(3) the language of this certification be included in the award documents for all sub-awards at all tiers and that all sub-recipients shall certify accordingly.

§3.4020. Nonprocurement debarment certification.

All applications under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Victims of Crime Act Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that neither the applicant nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by a federal department or agency. If the prospective lower tier participant is unable to certify to any of the statements in this certification, the prospective participant must attach an explanation to each application.

§3.4025. Drug-free workplace certification.

(a) All applications under the Juvenile Justice and Delinquency Prevention Act Fund, Title V Delinquency Prevention Fund, Texas Narcotics Control Program, and Safe and Drug-Free Schools Fund must include a signed copy of this certification. It certifies that the grantee will provide a drug-free workplace by:

(b) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition.

(c) Establishing a drug-free awareness program to inform employees about the dangers of drug abuse in the workplace; the grantee's policy of maintaining a drug-free workplace; any available drug counseling, rehabilitation, and employee assistance programs; and the penalties that may be imposed upon employees for drug abuse violations.

(d) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by subsection (a) of this section.

(e) Notifying the employee in the statement required by paragraph (A) that, as a condition of employment under the grant, the employee will abide by the terms of the statement and notify the employer of any criminal drug statute conviction for a violation occurring in the workplace not later than five days after such conviction.

(f) Notifying the agency within ten days after receiving notice under subsection (e) of this section from an employee or otherwise receiving actual notice of such conviction.

(g) With respect to any employee who is so convicted, the agency will take appropriate personnel action against such an employee, up to and including termination or require such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state, or local health, law enforcement, or other appropriate agency.

(h) Making a good faith effort to continue to maintain a drug-free workplace through the implementation of subsections (a)-(g) of this section.

§3.4030. Certification of fiscal responsibility.

All applications submitted by nonprofit corporations for Juvenile Justice and Delinquency Prevention Act projects must include a signed copy of this certification. It certifies that the applicant's financial officer, treasurer of the corporation, or authorized official is fiscally capable of managing federal grant funds and is capable of meeting audit requirements set forth in this chapter. The applicant is required to submit the organization's most recent audit. If the audit is not available, the responsible official agrees to submit an audit to the Criminal Justice Division by the deadline set by CJD.

§3.4035. Contract for residential services.

All applications that include a line item under Schedule B, Professional and Contractual Services to procure residential services for juveniles who have come to the attention of the court must include a contract for those services. Such contracts are eligible under State Criminal Justice Planning Fund and the Juvenile Justice and Delinquency Prevention Fund only.

§3.4040. Nonresidential services agreement.

All applications that include a line item under Schedule B, Professional and Contractual Services to procure nonresidential services for juveniles who have come to the attention of the court must include a contract for those services. Such contracts are eligible under State Criminal Justice Planning Fund and the Juvenile Justice and Delinquency Prevention Fund only.

§3.4045. Contract for detention services.

All applications that include a line item under Schedule B, Professional and Contractual Services to procure juvenile detention services in another county must include a contract for those services. Such contracts are eligible under State Criminal Justice Planning Fund and the Juvenile Justice and Delinquency Prevention Fund only.

§3.4050. Civil rights liaison certification.

All applicants under the Victims of Crime Act must submit this certification with the application. It certifies that the designated person is named as the civil rights contact person who has lead responsibility for insuring that all applicable civil rights requirements are met and who shall act as liaison in civil rights matters with the Criminal Justice Division and with the Office of Justice Programs in the U.S. Department of Justice.

§3.4055. Single audit act certification.

(a) All applications for Texas Narcotics Control Program grants must include a signed copy of this certification. It certifies that the grantee assures compliance by itself and its applicable subrecipients (contractors) with the Single Audit Act of 1984, PL 98-502 (ACT) and, particularly, with the requirements of OMB Circular A-128 that states:

(1) receipt of grant funds of $100,000 or over requires an annual audit by an independent auditor made in accordance with the requirements of OMB Circular A-128; or

(2) receipt of grant funds of $25,000 to $100,000 requires an annual audit made in accordance with OMB Circular A-128 or in accordance with federal laws and regulations governing the program; or

(3) receipt of grant funds of less than $25,000 are exempt from the Act but governed by audit requirements prescribed by state or local law or regulation.

(b) If items from subsection (a)(1) or (2) of this section apply, the grantee must, within 60 days following the date of the grant award, furnish the identity of the organization conducting the audit, approximate time audit will be conducted, or audit coverage to be provided.

§3.4060. Certification of drug testing.

All applications under the Texas Narcotics Control Program must include a signed copy of this certification. It certifies that all grant funded personnel and those assigned to the project full-time will be randomly tested quarterly for illegal narcotics according to applicant policies. If policies are not already adopted to allow for random drug testing, then such policies will be adopted. This criteria is designed to further provide a drug-free work environment and maintain the integrity of the project.

§3.4065. Juvenile Justice and Delinquency Prevention Act compliance certification.

All applications for local projects under the Juvenile Justice and Delinquency Prevention Act must include a signed copy of this

certification. It certifies that all jurisdictions to be served by the grant are in compliance with the following federal mandates:

(1) Status offenders and non-offenders shall not be placed in secure facilities. Exception is allowed for the first 24 hours and for weekends and holidays. Exception is also allowed for detention of adjudicated status offenders who have violated a valid court order. However, status offenders may not be held in jails or lockups for any length of time. Status offenses are offenses such as runaway, truancy, and curfew violations, that would not be offenses if committed by an adult.

(2) Juveniles shall not be detained in any jail or lockup for adults. An exception is allowed for the first six hours of detention for juveniles accused of an offense other than runaway, truancy, or simple possession of alcohol. During this six-hour grace period, the juvenile must be separated by sight and sound from adult prisoners, including trusties. The above requirement applies only to juveniles placed in a cell, a locked room, or cuffed to a stationary object. The requirement does not apply to juveniles held in nonsecure custody. While in nonsecure custody, the juvenile must be separated by sight and sound from adult prisoners, must not be cuffed to a stationary object, and must be watched by an officer or staff member. The juvenile may not be held overnight.

§3.4070. Certified assurances.

All applications for CJD funding must include a signed copy of these assurances. It certifies that the grantee agency will comply with the regulation, policies, guidelines and requirements including OMB Circulars Numbers A-122, A-110, A-102, and A-87, as they relate to the application, acceptance, and use of funds for this project. Also the applicant assures and certifies to the grant that:

(1) It possesses legal authority to apply for the grant; that a resolution, motion, or similar action has been duly adopted or passed as an official act of the applicant's governing body, authorizing the filing of the application including all understandings and assurances contained therein, and directing and authorizing the person identified as the official representative of the applicant to act in connection with the application and to provide such additional information as may be required.

(2) It will comply with requirements of the provisions of the Uniform Relocation Assistance and Real Property Acquisitions Act of 1970 (P. L. 91-646) which provides for fair and equitable treatment of persons displaced as a result of Federal and federally assisted programs.

(3) It will comply with the minimum wage and maximum hours provisions of the Federal Fair Labor Standards Act, as they apply to hospital and educational institution employees of state and local governments.

(4) It will establish safeguards to prohibit employees from using their positions for a purpose that is or gives the appearance of being motivated by a desire for private gain for themselves or others, particularly those with whom they have family, business, or other ties.

(5) It will give the sponsoring agency or the Comptroller General through any authorized representative the access to and the right to examine all records, books, papers, or documents related to the grant.

(6) It will comply with all requirements imposed by the federal sponsoring agency concerning special requirements of law, program requirements, and other administrative requirements.

(7) It will insure that the facilities under its ownership, lease, or supervision that shall be utilized in the accomplishment of the project are not listed on the Environmental Protection Agency's (EPA) list of Violating Facilities and that it will notify the federal or state grantor agency of the receipt of any communication from the Director of the EPA Office of Federal Activities indicating that a facility to be used in the project is under consideration for listing by the EPA.

(8) It will comply with the flood insurance purchase requirements of §102 (a) of the Flood Disaster Protection Act of 1973, Public Law 93-234, 87 Stat. 975, approved December 31, 1976. Section 102 (a) requires, on and after March 2, 1975, the purchase of flood insurance in communities where such insurance is available as a condition for the receipt of any federal financial assistance for construction or acquisition purposes for use in any area that has been identified by the Secretary of the Department of Housing and Urban Development as an area having special flood hazards.

(9) It will assist the grantor agency in its compliance with §106 of the National Historic Preservation Act of 1966 as amended (16 U. S. C. 470), Executive Order 11593, and the Archeological and Historic Preservation Act of 1966 (16 U. S. C. 469a-1 et seq.) by consulting with the State Historic Preservation Officer on the conduct of investigations, as necessary, to identify properties listed in or eligible for inclusion in the National Register of Historic Places that are subject to adverse effects as stated in 6 CFR Part 800.8 by the activity, and notifying the grantor agency of the existence of any such properties, and by complying with all requirements established by the grantor agency to avoid or mitigate adverse effects upon such properties.

(10) It will comply with the Uniform Grant and Contract Management Standards (UGCMS) developed under the directive of the Uniform Grant and Contract Management Act, Chapter 183, Texas Government Code.

(11) It, if a county, has taken or will take all action necessary to provide the Texas Department of Criminal Justice and the Department of Public Safety any criminal history records maintained by the county in the manner specified for the purposes of those departments.

(12) It will comply with Title VI of the Civil Rights Act of 1964, 42 USC 2000d which prohibits discrimination on the basis of race, color, or national origin, Section 504 of the Rehabilitation Act of 1964, 42 USC, 794 which prohibits discrimination on the basis of handicap, the Age Discrimination Act of 1975, 42, USC 6101, et seq., and the Department of Justice Nondiscrimination Regulations, 28 CFR, Part 42, Subparts C, D, and G.

(13) It will, in the event a federal or state court or federal or state administrative agency makes a finding of discrimination after a due process hearing, on the ground of race, color, religion, national origin, sex, age, or handicap against the project, forward a copy of the finding to the Criminal Justice Division (CJD).

(14) It will comply with Subtitle A, Title II of the Americans With Disabilities Act (ADA), 42 U.S.C 12131-12134, and Department of Justice implementing regulation, 28 CFR Part 35, whereas state and local governments may not refuse to allow a

person with a disability to participate in a service, program, or activity simply because the person has a disability.

(15) It will comply with the following sections of the Juvenile Justice and Delinquency Prevention Act, USC 5671 (c) (1): (a) (12) (A), regarding removal of status offenders from secure facilities; (a) (13), regarding sight-and-sound separation of juveniles from adults when detained in the same secure facility; (a) (14), regarding removal of juveniles from adult jails and lockups; and (a) (23), regarding reduction of the disproportionate confinement of racial and ethnic minorities in secure facilities.

(16) It will comply with the provisions of the Hatch Act, which limit the political activity of employees.

(17) It will comply, and assure the compliance of all its contractors, with the applicable provisions of Title I of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act, as appropriate; the provisions of the current edition of the Office of Justice Programs Financial Guide; and all other applicable federal laws, circulars, or regulations.

(18) It will comply with the provisions of 28 CFR applicable to grants and cooperative agreements including Part 18, Administrative Review Procedure; Part 20, Criminal Justice Information Systems; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination/ Equal Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; Part 63, Floodplain Management and Wetland Protection Procedures; and federal laws or regulations applicable to federal assistance programs.

(19) It will comply, and all its contractors will comply, with the nondiscrimination requirements of the Omnibus Crime and Safe Streets Act of 1968, as amended, 42 USC 3789(d), the Juvenile Justice and Delinquency Prevention Act, or the Victims of Crime Act (as appropriate); Title VI of the Civil Rights Act of 1964, as amended; Section 504 of the Rehabilitation Act of 1973, as amended; Subtitle A, Title II of the Americans with Disabilities Act of 1990; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; Department of Justice Non-Discrimination Regulations, 28 CFR Part 42, Subparts C, D, E, and G; and the Department of Justice regulations on disability discrimination, 28 CFR Part 35 and Part 39.

(20) It will provide an Equal Opportunity Program if required to maintain one, where the application is for $500,000 or more.

(21) It will comply with the provisions of the Coastal Barrier Resources Act (P.L. 97-348) dated October 19, 1982 (16 USC 3501, et seq.), which prohibits the expenditure of most new federal funds within the units of the Coastal Barrier Resources System.

§3.4075. Confidential funds certification.

(a) All applications that include a line item for confidential funds must include a signed copy of this certification. It certifies that the applicant has read, understands, and agrees to abide by all of the conditions for confidential funds as set forth in subsections (a)-(j) of this section.

(b) Confidential expenditures include the following types of purchases and may be authorized for subgrants at the state, county, and city level of law enforcement.

(1) Purchase of Services (P/S). This category includes travel or transportation of a non-federal officer or an informant; the lease of an apartment, business front, luxury-type automobile, aircraft or boat, or similar effects to create or establish the appearance of affluence; and/or meals, beverages, entertainment, and similar expenses for undercover purposes, within reasonable limits.

(2) Purchase of Evidence (P/E). This category is for the purchase of evidence and/or contraband such as narcotics and dangerous drugs, firearms, stolen property, counterfeit tax stamps, etc., required to determine the existence of a crime or to establish the identity of a participant in a crime.

(3) Purchase of Specific Information (P/I). This category includes the payment of moneys to an informant for specific information. All other informant expenses would be classified under P/S and charged accordingly.

(c) Confidential funds are those moneys allocated to purchase of services, purchase of evidence, and purchase of specific information. These funds should be allocated only when the particular merits of a program or investigation warrant the expenditure of these funds or when requesting agencies are unable to obtain these funds from other sources.

(d) Confidential funds are subject to prior approval by CJD. Such approval will be based on a finding that they are a reasonable and necessary element of project operations. In this regard the approving agency must also ensure that the controls over disbursement of confidential funds are adequate to safeguard against the misuse of such funds. CJD will make this determination from a review of the grant application and the receipt of a signed certification. A signed certification that the project director has read, understands, and agrees to abide by the provisions of the guideline is required from all projects that are involved with confidential funds from either federal or matching funds. The signed certification must be approved at the time of grant application.

(e) Each project authorized to disburse confidential funds must develop and follow internal procedures which incorporate the following elements. Deviations from the following elements must receive prior approval of the Criminal Justice Division.

(1) Imprest Fund. The funds authorized will be established in an imprest fund controlled by a bonded cashier.

(2) Advance of Funds. The supervisor of the unit to which the imprest fund is assigned must authorized all advances of funds. Such authorization must specify the purpose of the information to be received, the amount of expenditures, and the assumed name of the informant.

(3) Informant files are confidential files of the true names, assumed names, and signature of all informants to whom payments of confidential expenditures have been made. To the extent possible, pictures and fingerprints of the informant payee should also be maintained.

(4) The cashier shall receive, from the agent or officer authorized to make a confidential payment, a receipt for cash advanced to him/her for such purposes. The agent or officer shall receive from the informant payee a receipt for cash paid to him/her.

(5) An informant payee receipt shall identify the exact amount paid to and received by the informant payee on the date executed. Cumulative or anticipatory receipts are not permitted.

Once the receipt has been completed no alteration is allowed. The agent shall prepare an informant payee receipt containing the following information: the jurisdiction initiating the payment; a description of the information/evidence received; the amount of payment, both in numerical and word form; the date on which the payment was made; the signature of the informant payee; the signature of the case agent or officer making payment; the signature of at least one other officer witnessing the payment; and the signature of the first-line officer authorizing and certifying the payment.

(6) The signed receipt from the informant payee with a memorandum detailing the information received shall be forwarded to the agent or officer in charge. The agent or officer in charge shall compare the signatures. He/she shall also evaluate the information received in relation to the expense incurred, and add his/her evaluation remarks to the report of the agent or officer who made the expenditures from the imprest fund. The certification will be witnessed by the agent or officer in charge on the basis of the report and informant payee's receipt.

(7) Each project shall prepare a reconciliation report on the imprest fund on a quarterly basis. Information included in the reconciliation report will be the assumed name of the informant payee, the amount received, the nature of the information given, and to what extent the information contributed to the investigation. Grantees shall retain the reconciliation report in their files available for review.

(8) Each project must retain records of each confidential fund transaction. At a minimum, these records must consist of all documentation concerning the request for funds, processing (to include the review and approval/disapproval), modifications, closure or impact material, and receipts and/or other documentation necessary to justify and track all expenditures. In projects where grant funds are used for confidential expenditures, it will be understood that all of the above records, except the true name of the informant, are subject to the record and audit provisions of the grantor agency legislation.

(f) Special accounting and control procedures should govern the use and handling of confidential expenditures, as described below:

(1) It is important that expenditures which conceptually should be charges to PE / PI / PS are in fact so charged. It is only in this manner that these funds can be properly managed at all levels and accurate forecasts of projected needs can be made.

(2) Each law enforcement entity should apportion its PE / PI / PS allowance throughout its jurisdiction and delegate authority to approve PE/ PI/ PS expenditures to those officers, as it deems appropriate.

(3) Headquarters management should establish guidelines authorizing offices to spend up to a predetermined limit of their total allowance on any one buy or investigation.

(4) In exercising his/her authority to approve these expenditures, the supervisor should consider the significance of the investigation; the need for this expenditure to further that investigation; and anticipated expenditures in other investigations. Funds for PE/ PI/ PS expenditures should be advanced to the officer for a specific purpose. If they are not expended for that purpose, they should be returned to the cashier. They should not be used for another purpose without first returning them and repeating the authorization and advance process based on the new purpose.

(5) Funds for a PE / PI / PS expenditure should be advanced to the officer on a suitable receipt form. A receipt for purchase of information or a voucher for purchase of evidence should be completed to document funds used in the purpose of evidence or funds paid or advanced to an informant.

(6) For security reasons, there should be a limit on the amount of time that funds may be held outstanding. In metropolitan areas where field agents have a timely access to their headquarters, there should be a weekly reconciliation of outstanding funds. In rural areas where agents are more than a hundred miles from their headquarters, reconciliation of outstanding funds should be done every two weeks. If it becomes apparent that during this time the expenditure will not materialize, then the funds should be returned to the advancing cashier as soon as possible. An extension to the established time period may be granted by the level of management that approved the advance. Factors to consider in granting such an extension are the amount of funds involved, the degree of security under which the funds are being held, how long an extension is required, and the significance of the expenditure. Such extensions should be limited to a week for metropolitan areas and two weeks for rural areas. Beyond this, the funds should be returned and advanced again, if necessary. Regardless of the circumstances, within the designated time limit, the fund cashier should be presented with the unexpended funds, an executed voucher for payment of confidential expenditures, or written notification by management that an extension has been granted.

(7) Purchase of services expenditures, when not endangering the safety of the officer or informant, need to be supported by canceled tickets, receipts, lease agreements, mileage logs which indicate the destination and purpose of travel, etc. If not available, the office head, or his/her immediate subordinate, must certify that the expenditures were necessary and justify why supporting documents were not obtained.

(h) The specific procedures required in establishing a person as an informant may vary from jurisdiction to jurisdiction but, at a minimum, should include the following:

(1) Assignment of an informant code name to protect the informant's identity;

(2) An informant code book controlled by the office head or his/her designee containing an informant's code name, the type of informant (i.e., informant, defendant/informant, restricted-use/ informant), the informant's true name, the name of the establishing law enforcement officer, the date the establishment is approved, and the date of deactivation.

(3) Establish each informant file in accordance with subsection (h)(2) of this section.

(4) For each informant in an active status, the agent should review the informant file on a quarterly basis to assure it contains all relevant an current information. Where a material fact that was earlier reported on the Establishment Record is no longer correct (e.g., a change in criminal status, means of locating him/her, etc.) a supplemental establishing report should be submitted with the correct entry.

(5) All informants being established should be checked in all available criminal indices. If a verified FBI number is available, request a copy of criminal records from the FBI. Where a verified FBI number is not available, the informant should be fingerprinted with

a copy sent to the FBI and appropriate State authorities for analysis. The informant may be used on a provisional basis while awaiting a response from the FBI.

(6) A separate file should be established for each informant for accounting and security purposes. Informant files should be kept in a separate and secure storage facility, segregated from any other files, and under the exclusive control of the office head or an employee designated by him/her. The facility should be locked at all times when unattended. Access to these files should be limited to those employees who have a necessary legitimate need. An informant file should not leave the immediate area except for a review by a management official or the handling agent, and should be returned prior to the close of business hours. Sign-out logs should be kept indicating the date, informant number, time in and out, and the signature of the person reviewing the file. An informant file should include:

(A) Informant Payment Record, kept on top of file. This record provides a summary of informant payments.

(B) Informant Establishment Report, including complete identifying and locating data, plus any other documents connected with the informant's establishment.

(C) Current photograph and fingerprint card (or FBI/State Criminal Identification Number).

(D) Agreement with cooperating individual.

(E) Receipt for purchase of information.

(F) Copies of all debriefing reports (except for the Headquarters case file).

(G) Copies of case initiation reports bearing on use of the informant (except for Headquarters case file).

(H) Copies of statements signed by the informant (unsigned copies will be placed in appropriate investigative files).

(I) Any administrative correspondence pertaining to the informant, including documentation of any representations made on his/her behalf or any other nonmonetary considerations furnished.

(J) Any deactivation report or declaration of an unsatisfactory informant.

(i) Any person who is to receive payments charged against PE / PI funds should be established as an informant. This includes persons who may otherwise be categorized as sources of information or informants under the control of another agency. The amount of payment should be commensurate with the value of services and/or information provided and should be based on the level of the targeted individual, organization, or operation; the amount of the actual or potential seizure; and the significance of the contribution made by the informant to the desired objectives.

(j) Documentation of payments to informants is critical and should be accomplished on a receipt for purchase of information. Payment should be made and witnessed by two law enforcement officers and authorized payment amounts should be established and reviewed by at least the first-line supervisory level. In unusual circumstances, a non-officer employee or an officer of another law enforcement agency may serve as a witness. In all instances, the original signed receipt must be submitted to the project director for review and record keeping. There are various circumstances in which payments to informants may be made.

(1) Payments for Information and/or Active Participation. When an informant assists in developing an investigation, either through supplying information or actively participating in it, he/she may be paid for his/her service either in a lump sum or in staggered payments. Payments for information leading to a seizure, with no defendants, should be held to a minimum.

(2) Payment for Informant Protection. When an informant needs protection, law enforcement agencies may absorb the expenses of relocation. These expenses may include travel for the informant and his/her immediate family, movement and/or storage of household goods, and living expenses at the new location for a specific period of time (not to exceed six months). Payments for these expenses may either be lump sum or as they occur, and should not exceed the amounts authorized to be paid to law enforcement employees for these activities.

(3) Payments to Informants of Another Agency. If another agency's informant is to be used or paid, he/she should be established as an informant. These payments should not be a duplication of a payment from another agency; however, sharing a payment is acceptable.

§3.4080. Regional law enforcement training.

Applications to operate regional law enforcement academies must abide by all of the following requirements:

(1) Within 14 days after completion of each training school, the grantee shall submit to the Criminal Justice Division (CJD) a completed copy of the Report of Training form as required by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). The grantee must indicate which students completed the training school and list the agency that each student represented.

(2) The training academy providing services must be appropriately licensed by TCLEOSE. Any training course paid for with CJD funds must result in participants receiving credit hours from TCLEOSE.

(3) Peace officer training courses shall be open to all local peace officers as defined in the Texas Code of Criminal Procedure, article 2.12, on an equal basis. Reserve law enforcement officers, law enforcement radio dispatchers, and jailers are also eligible for training provided by CJD grant funds; however, dispatcher and jailer training is limited to basic training courses only.

(4) Funding for Basic Peace Officer Certification courses will be limited to the TCLEOSE mandated contact hours for each trainee, unless the grantee provides adequate justification for additional hours.

§3.4085. Cooperative working agreement.

When an application includes statements that explain that the project will be carried out in a significant part due to the cooperation of outside organizations, a signed copy of a cooperative working agreement must be signed by an authorized person from each external organization. Grantees must provide a signed copy of this agreement between the grantee and each significant external organization whose collaboration and cooperation are essential in achieving the goals of the grant project. Grantees should make every effort to include such agreements with the grant application.

§3.4090. Procuring consultants and services.

(a) When an application includes professional and contractual services, this applicant must demonstrate in the application that they will abide CJD procurement policies listed in this section. For the grantee to secure professional and consultant services in the approved grant budget, the following requirements apply:

(b) The grantee shall consult and observe the guidelines stated under §3.3050 (of this title relating to Professional and Contractual Services).

(c) When procuring consultants and services, grantees must use the following procedures:

(1) Purchases up to $1,000.00 may be made on a spot purchase basis, without comparative pricing.

(2) Purchases between $1000.01 and $2,500.00 require a minimum of three oral bids based on identical specifications. The purchaser (grantee) is required to maintain records for audit that show the name, telephone number, date, and bid amount of each source contacted.

(3) Purchases between $2,500.01 and $5,000.00 require that written invitations for bid, using identical specifications, be mailed to a minimum of three prospective suppliers. Such invitations must clearly state the deadline for receipt of written bids. The purchaser (grantee) is required to maintain records for audit that include copies of all invitations and all written responses, including original signatures.

(4) Purchases above $5,000.00 require formal newspaper advertising soliciting bids. The purchaser is required to maintain records for audit that include copies of the advertisement(s) and all written responses, including original signatures.

(5) When the required services, supplies, or the required skills are so unique that the purchaser cannot identify a minimum of three prospective sources–when the cost exceeds $1,000.00–the purchaser (grantee) shall seek guidance from CJD. In such cases, the grantee shall provide to CJD a letter containing all relevant facts and a proposed course of action.

(6) Audit organizations and individual independent auditors typically will not respond to an invitation for bid, with precise specifications stipulated by the purchaser. In such cases, the purchaser should extend an invitation for proposal, which permits the prospective supplier to develop specifications of the engagement or purchase and to quote a relevant cost. It is then incumbent upon the purchaser to select the lowest cost proposal that meets the organizational needs.

(7) In all instances, prior to the delivery of services, a written contract should be executed to secure professional or consultant services. A recommended format for such a contract is included following this special condition.

(d) Following the solicitation of bids and prior to the execution of a contract, the grantee shall obtain CJD approval, by providing the following in writing:

(1) a brief narrative description of the specific procurement procedure that was used;

(2) a copy of the newspaper advertisement, if that method is required by the applicable procurement procedure;

(3) a draft copy of the proposed contract;

(4) a list of vendors or practitioners from whom bids or quoted were solicited;

(5) a list of vendors or practitioners who offered bids or quotes offered, citing the cost per hour or other appropriate unit of measure;

(6) an explanation, if only one response is obtained, why that is the case; and

(7) an explanation, if the lowest bid or quote is not selected, why that is the case.

(e) Regardless of the procurement method used, all purchasers (grantees) must ensure compliance with the procurement standards expressed in section 36 of the Office of Management and Budget Circular Number A-102, which is applicable to units of government or Attachment O, Circular Number A-110, which is applicable to nonprofit corporations.

§3.4095. Plan for Juvenile Justice and Delinquency Prevention Act Compliance.

When a grantee under the Juvenile Justice and Delinquency Prevention Act or Title V Delinquency Prevention Fund has been found by CJD to not be in compliance with the mandates of the Juvenile Justice and Delinquency Prevention Act as described in §3.4065 (of this title relating to Juvenile Justice and Delenquency Prevention Act Compliance Certification), CJD will place this special condition on the grantee. This special condition requires a plan and timetable, describing steps to be taken to achieve full compliance with this federal mandate, including use of these grant funds for that purpose. A copy of the plan and timetable shall be submitted to the Criminal Justice Division.

§3.4100. Equipment review and approval.

(a) Prior to obligating or expending grant funds for equipment purchases in excess of $15,000, a grantee shall submit the following documentation to the Criminal Justice Division for review and approval. Documents must be transmitted by a letter signed by the Authorized Official named in the grant or by the person designated in the "Grantee Acceptance Notice" to initiate grant adjustments.

(1) A brief narrative description of the procurement procedures used.

(2) An unequivocal statement of which low compliant bid was selected.

(3) A list of vendors requested to bid or respond.

(4) A copy of the public advertisement.

(5) A copy of the Request for Proposal (RFP) or the Invitation for Bid (IFB) with bid specifications.

(6) One copy of each response.

(7) Bid tabulation sheet.

(8) When a grantee does not accept the apparent low bid, a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals. The transmittal letter must state the reasons why a bid is rejected when a higher bid is selected.

(9) A copy of sales or purchase contract, if applicable.

(b) A grantee, must at a minimum, comply with its own procurement procedures and the Local Government Code.

(c) Requests for proposal or invitations for bid issued by the grantee or a subgrantee to implement the grant or subgrant project are to provide notice to prospective bidders that the CJD organizational conflict of interest provision is applicable in that contractors who develop or draft specifications, requirements, statements of work and/or RFPs for a proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such procurement.

(d) State agencies using the purchasing services of the General Services Commission are to exempted from submitting bidding documentation to CJD for review and approval prior to purchasing equipment. This requirement is especially important when only one compliant bid is received.

§3.4105. Contract review and approval.

(a) All contracts in excess of $15,000 will be submitted to CJD for approval prior to grantee obligating or expending any grant funds for contractual services. Each contract should be transmitted by a letter signed by the authorized official named in the grant or by the person designated to initiate grant adjustments and be accompanied by the following:

(1) a brief narrative description of the procurement procedures used and an unequivocal statement of which low compliant bid was selected;

(2) a list of vendors requested to bid or respond (State agencies using the purchasing service of the State Purchasing and General Services Commission are not exempted from this requirement. Requests for Proposal (RFP) or Invitations for Bid (IFB) issued by the grantee to implement the grant project are to provide notice to prospective bidders that the CJD organizational conflict-of-interest provision is applicable in that contractors who develop or draft specification, requirements, statements of work, and/or RFPs for proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such contract or order.);

(3) a copy of the public advertisement;

(4) a copy of the RFP or the IFB, with specifications;

(5) a copy of each response;

(6) a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals;

(7) if only one response is received, an explanation of why only one response was received, and

(8) if sole source procurement is necessary, (i.e., contract is awarded to any organization without conducting a formal advertising and competitive bidding process or without soliciting proposals from potentially qualified contractors) or if only one bid was received, the documents submitted to CJD must include an explanation for having selected the sole source contractor. The explanation shall include the signature, title, and organization of the Authorized Official named in the grant or of the person designated to initiate grant adjustments. An example of the justification for sole source procurement is when there is only one existing service provider who can perform or provide the required services or goods.

(b) Two or more contracts exceeding $15,000 with one individual or firm are subject to these provisions and require CJD approval.

(c) Justification for sole source procurement must be presented in a format according to the outline prescribed by CJD in the application kit.

§3.4110. District attorney contract.

All applications for multi-jurisdictional task forces under the Texas Narcotics Control Program should include this executed contract. This special condition requires that:

(1) The district attorney shall diligently pursue all forfeiture actions which arise from operations initiated and investigated by the task force.

(2) Property seized by the task force under the provisions of law shall remain in the custody of the task force until final disposition of the forfeiture action.

(3) Funds seized by the task force under the provisions of law may be placed in the custody of the Attorney until final disposition of the forfeiture action provided such funds are maintained in a separate bank account subject to review by the task force involved and the Criminal Justice Division of the Office of the Governor.

(4) Upon final disposition of the forfeiture action, all funds, interest accrued, and all property attributable to the efforts of the task force shall be awarded to the task force, the exception being certain forfeitures referred to the Drug Enforcement Administration of the United States Department of Justice.

(5) All property and funds awarded to the task force under forfeiture action represent program income. Up to the total grant award amount, these funds shall be added to the funds committed to the project in accordance with the Office of Justice Programs Financial Guide Page 36, Par. 42.a(5). Any program in excess of the total grant award amount may be retained by the grantee with Criminal Justice Division approval and must be used for purposes that further the objectives of the project.

(6) This agreement shall be in effect for the term of the task force grant.

§3.4115. Interagency agreement review and approval.

All applications for multi-jurisdictional task forces under the Texas Narcotics Control Program should include an interagency agreement with each agency that will be involved directly in the task force project. The interagency agreement must include a detailed budget including personnel, travel, equipment, and other operating expenses that are to be reimbursed from grant funds and a copy of the Certified Assurances and Equal Employment Opportunity Program certification from each agency.

§3.4120. Forfeiture audit certification and forms.

All applications for projects that may involve the seizure and forfeiture of assets and property must have an audit of such activities and submit it to CJD along with a signed copy of this certification within 30 days after the audit. It certifies that all law enforcement agencies and attorneys representing the state who receive proceeds or property under §59.06(g) Code of Criminal Procedure, shall account for the seizure, receipt, and disbursement of all such proceeds and property in an audit, which is to be performed annually by the commissioners court or governing body of a municipality, as

appropriate. The audit shall be completed in the form prescribed by the Criminal Justice Division of the Office of the Governor. Certified copies of the audit shall be delivered by the law enforcement agency or attorney representing the state to the Criminal Justice Division of the Office of the Governor no later than 30 days after the audit is completed.

§3.4125. Historically underutilized businesses.

All CJD grantees must make a good faith effort to encourage these businesses to bid for contracts and services. To report this effort, grantees must submit a completed copy of the HUB-PAR form, available from the Criminal Justice Division, with each quarterly financial expenditure report.

§3.4130. Texas Narcotics Control Program certified assurances.

All applications for projects under the Texas Narcotics Control Program must submit a signed copy of this certification. This certifies that the applicant meets the following requirements:

(1) The applicant assures that federal funds made available under this formula grant will not be used to supplant state or local funds, but will be used to increase the amounts of such funds that would, in the absence of federal funds, be made available for law enforcement activities.

(2) The applicant assures that matching funds required to pay the non-federal portion of the cost of each program and project, for which grant funds are made available, shall be in addition to funds that would otherwise be made available for law enforcement by the recipients of grant funds.

(3) The applicant assures that fund accounting, auditing, monitoring, and such evaluation procedures as may be necessary, to keep such records as CJD shall prescribe, shall be provided to assure fiscal control, proper management, and efficient disbursement of funds received under the grant.

(4) The applicant assures that it shall maintain such data and information and submit such reports, in such form, at such times, and containing such information as CJD may require.

(5) The applicant certifies that the programs contained in its application meet all requirements, that all the information is correct, that there has been appropriate coordination with affected agencies, and that the applicant will comply with all provisions of the grant and all other applicable federal and state laws, regulations, and guidelines.

(6) The applicant assures that it will comply, and all its contractors will comply, with the nondiscrimination requirements of the Justice Assistance Act; Title VI of the Civil Rights Act of 1964; §504 of the Rehabilitation Act of 1973, as amended; Title IX of the Education Amendments of 1972; the Age Discrimination Act of 1975; the Department of Justice Nondiscrimination Regulations 28 CFR Part 42, Subparts C, D, E, and G; and Executive Order 11246, as amended by Executive Order 11375, and their implementing regulations, 41 CFR Part 60.1 et seq., as applicable to construction contracts.

(7) The applicant assures that in the event a federal or state court or a federal or state administrative agency makes a finding of discrimination after a due process hearing on the grounds of race, color, religion, national origin, or sex against a recipient of funds, the recipient will forward a copy of the finding to the Office of Civil Rights Compliance (OCRC), Office of Justice Programs, and the Criminal Justice Division.

(8) The applicant assures that it will require that every recipient required to formulate an Equal Employment Opportunity Program (EEOP), in accordance with 28 CFR 42.301 et seq., submit a certification to the state that it has a current EEOP on file which meets the requirements therein.

(9) The applicant assures that it will provide an EEOP, if required to maintain one, where the application is for $500,000 or more.

(10) The applicant assures that it will comply with the provisions of the Office of Justice Programs Financial Guide.

(11) The applicant assures that it will comply with the provisions of 28 CFR applicable to grants and cooperative agreements, including Part II, Applicability of Office of Management and Budget Circulars; Part 18, Administrative Review Procedures; Part 20, Criminal Justice Information Systems Operating Policies; Part 22, Confidentiality of Identifiable Research and Statistical Information; Part 23, Criminal Intelligence Systems Operating Policies; Part 30, Intergovernmental Review of Department of Justice Programs and Activities; Part 42, Nondiscrimination Equal Employment Opportunity Policies and Procedures; Part 61, Procedures for Implementing the National Environmental Policy Act; and Part 63, Floodplain Management and Wetland Protection Procedures.

(12) The applicant assures that when issuing statements, press releases, requests for proposals, bid solicitations, and other documents describing projects or programs funded in whole or in part with federal money, all grantees receiving federal funds, including but not limited to state and local governments, shall clearly state the percentage of the total cost of the program or project which will be financed with federal money and the dollar amount of federal funds for the project or program.

§3.4135. Resolutions.

Applicants must include in each local application a resolution from the local governing body (i.e., city council, county commissioners' court, school board, or board of directors) that authorizes submission of the application to CJD and that clearly identifies the project for which funding is requested. The resolution should include a commitment for cash match, if applicable. If the applicant is not providing all of the matching funds, then the other participating entities who are providing portions of any cash match must also submit resolutions.

§3.4140. Texas Review and Comment System (TRACS).

(a) The Texas Review and Comment System (TRACS) provides opportunities for state and local officials to review and comment on applications affecting their jurisdictions prior to final funding action. The only applications exempted from this policy are those under the Crime Stoppers Assistance Program. All others must submit a copy of their application for TRACS review.

(b) Applicants for local projects meet this requirement by submitting their applications to the appropriate regional council of governments. Copies of applications for statewide projects must be submitted to the single point of contact at the Governor's Office of Budget and Planning; Attention: Mr. Tom Adams; Post Office Box 12428; Austin, Texas 78711.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614087
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 475-2595

Award and Grant Acceptance

1 TAC §3.5000, §3.5005

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc14] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.5000. Notification of Award.

CJD will notify all applicants of final action on a grant application in accordance with the Texas Review and Comment System. Each grantee must accept or reject a grant award within 45 days of the grant award date. Failure by the grantee to execute the grantee acceptance notice within this time period and promptly forward that notice to CJD shall be construed as a rejection of the grant award. In addition, each grantee must implement the grant within 45 days of the designated start date indicated on the statement of grant award. Failure to do so will be construed by CJD as the grantee's relinquishment of the grant award. Any exception to this rule will require the review and written approval of the CJD executive director.

§3.5005. Appeal Process.

If CJD does not fund an application, an applicant may appeal the decision by writing to the governor through the executive director of CJD within ten days of the date of notification. The applicant should submit written documentation in support of the appeal. The governor or his designee will consider any documentation submitted by the applicant. The governor's decision concerning an appeal is final.

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

Issued in Austin, Texas on September 24, 1996.

TRD-9614088
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Administering Grants

1 TAC §§3.6000, 3.6005, 3.6010, 3.6015, 3.6020, 3.6025, 3.6030, 3.6035, 3.6040, 3.6045, 3.6050, 3.6055, 3.6060, 3.6065, 3.6070, 3.6075, 3.6080, 3.6085, 3.6090, 3.6095, 3.6100

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc15] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.6000. Grant Officials.

Each grant must have three persons designated to serve as grant officials:

(1) The project director must be an employee of the applicant agency or from the contractor organization, at the applicant's option, who will be responsible for operation or monitoring of the project. The project director cannot be the same person as the financial officer.

(2) The financial officer must be the chief financial officer of the applicant agency. Such officials include county auditor, city treasurer, comptroller, and treasurer of the nonprofit corporation's board. The financial officer cannot be the same person as the project director.

(3) The authorized official is the person authorized to apply for, accept, decline, or cancel the grant for the applicant agency. This person may be the executive director of the state agency, county judge, mayor, city manager, assistant city manager, or designee if authorized by the governing body.

§3.6005. Obligating Funds.

Grant funds may not, without advance written approval by the executive director of CJD, be obligated prior to the start date or after the ending date of the grant period. Obligations must be for approved budget items and purposes. Grant-funded personnel may use grant funds only for project activities stated in the approved grant application.

§3.6010. Retention of Report Records.

The grantee must maintain reports and source documentation for three years after completion of the grant period. These records are subject to audit by Comptroller General of the United States, state auditors or CJD monitors or auditors. If any legal action is pending on a grantee that involves the grant project, the grantee must retain the records for three years following resolution of the legal action or three years after the end of the grant period, whichever date is later.

§3.6015. Financial Reports.

CJD requires each grantee to submit financial expenditure reports each calendar quarter. CJD provides the appropriate forms and instructions to each grantee. The financial officer designated for the grant must sign and submit such reports.

§3.6020. Inventory Reports.

CJD requires each grantee to maintain an inventory report on file of all equipment purchased as part of the grant project, including in-kind contributions. This report must agree with the final financial expenditure report. The grantee must submit it to CJD with the final progress report.

§3.6025. Requests for Funds.

Grantees must submit all requests for funds to CJD, to the attention of the director of accounting, in accordance with the instructions provided by CJD and in the form required by CJD. CJD will not honor requests for funds until the grantee satisfies all outstanding special conditions outlined on the statement of grant award or placed on the grantee after award. CJD will not make payments later than 90 days after the end of the grant period.

§3.6030. Grant Adjustments.

(a) When it becomes necessary to change any significant program or budget element of a grant, the grantee may request a grant adjustment. The person designated in the grantee acceptance notice to request grant adjustments or the authorized official must sign all requests. CJD must approve an adjustment in advance through a grant adjustment notice mailed to the project director and the financial officer for the grant.

(b) CJD will not consider more than four grant adjustments each grant year where the request is to alter the approved or previously amended budget. CJD will only consider additional budget adjustments if CJD expressly requests the budget amendment for reasons other than to resolve deficiencies found during monitoring visits or other examinations of grantee records.

(c) CJD will not honor a request to reallocate funds originally intended for personnel to other categories where the reason was a delay in hiring or a personnel vacancy.

(d) CJD will record grant adjustments that request changes other than those to the budget or the activities of the program. Such changes of basic information will not be acknowledged in writing by CJD.

(e) The grantee shall notify CJD in writing of any change of the designated project director, financial officer, or authorized official within five days following the change. When such notification records a change of the financial officer, the letter must include a sample signature of the new official.

(f) Each grantee is responsible for initiating a grant adjustment. The request is usually accomplished through a letter, although any information that clarifies the request may be included. The grantee must secure CJD approval, through a grant adjustment notice, in advance and each request must include a detailed justification for any:

(1) out-of-state travel that was not included by individual trip in the approved budget;

(2) changes in the need, objectives, methodology, scope, or geographical location of the grant; transfers of funds among direct cost categories exceeding five percent of the total grant budget over the grant year;

(3) changes in the number or job descriptions of personnel specified in the grant;

(4) changes in equipment amounts, types, or methods of acquisition;

(5) changes in the grant period or in the period for liquidating all encumbered funds;

(6) decrease in the grantee cash contribution;

(7) expenditure of program income not allocated in the approved budget;

(8) new line items to be included in the budget or changes to existing line items;

(9) cost-of-living and merit increases for a budgeted salary (grantees should include approval by the governing body citing the effective date of the increases);

(10) payments to confidential informants exceeding $2,500; or payments of liens on forfeited vehicles or real estate.

(g) A grantee may submit a written request for a grant extension. The executive director of CJD will approve such requests only in extraordinary circumstances. CJD will not extend a grant for more than 12 months.

(h) CJD will not honor facsimile copies of grant adjustment requests and will not give verbal approvals.

(i) No budgetary grant adjustment requests will be honored 30 days prior to the end of the grant period.

(j) Over the course of the funding year, grantees may transfer funds between direct cost line items in different budget categories not to exceed a cumulative total of five percent of the grant budget during that year. All such budget transfers must comply with all relevant policies in this chapter. Transfers in excess of five percent require an approved budget adjustment.

§3.6035. Publications.

(a) The grantee must include the following statement in any written, video, or audio publication issued by the grant or a subcontractor describing the projects funded by CJD: "This project is supported by grant #______________, awarded by the Criminal Justice Division of the Office of the Governor. Points of view or opinions contained within this document are those of the author. They do not necessarily represent the official position or policies of the Criminal Justice Division." Grants from federal funds must also include the U.S. Department of Justice.

(b) In all statements, press releases, requests for proposals, bid solicitations, and other documents describing projects funded by CJD, grantees must clearly state the percentage of the total cost of the project financed with CJD funds and the dollar amount of CJD funds.

(c) The grantee must submit one copy of any such publication to CJD.

§3.6040. Copyrights.

If the grantee used any CJD funds to purchase or receive a copyright, CJD reserves a royalty-free and irrevocable license to reproduce, publish, use, or authorize others to use the copyrighted material.

§3.6045. Procurement Procedures.

(a) Prior to obligating grant funds for equipment purchases or professional or consultant services in excess of $15,000, the grantee must submit all documents to CJD for review and approval. The grantee should submit documents with a letter signed by the authorized official named in the grant or by the person designated to initiate grant adjustments. The documents should contain:

(1) a brief narrative description of the procurement procedures used and a statement of which low compliant bid was selected;

(2) a list of vendors requested to bid or respond. (State agencies using the purchasing service of the General Services Commission of Texas are not exempt. Requests For Proposals (RFPs) or Invitations For Bids (IFBs) issued by the grantee to implement the grant project must provide notice to prospective bidders that the CJD organizational conflict-of-interest provision is applicable. This provision states that contractors that develop or draft specifications, requirements, statements of work, and RFPs for proposed procurement shall be excluded from bidding or submitting a proposal to compete for the award of such a contract.);

(3) a copy of the public advertisement;

(4) a copy of the RFP or the IFB, with specifications;

(5) a copy of the response that received the contract (a copy of all responses must be kept on file by the grantee);

(6) a description of the selection process used to select the successful bidder, with a copy of the evaluation of all proposals;

(7) if sole-source procurement is necessary or if only one response is received, a justification for selecting the sole source or an explanation of why only one response was received; and

(8) a copy of the proposed contract.

(b) The standards and policies outlined in Office of Management and Budget's Common Rule, Section 36 (as included in the UGCMS), are binding on all grantees.

(c) Each state agency must comply with the provisions of chapter 2254, Texas Government Code, when securing consultant services.

(d) Cities and counties must comply with the requirements governing advertising for bids, as outlined in chapters 252 and 262, Local Government Code, for cities and counties respectively.

(e) State agencies contracting for professional or consultant services in excess of $15,000 are not required to submit to CJD a copy of the contract for approval. State law requires that agencies must submit such contracts to the General Services Commission of Texas for approval.

(f) As is mandated by article 601b, Texas Civil Statutes, grantees must make a good-faith effort to encourage Historically Underutilized Businesses (HUBs) to bid on services for grant-funded projects and to report the amount of grant dollars contractually awarded to HUBs. A Historically Underutilized Business is defined as: a corporation formed for profit in which at least 51% of the equity is owned by one or more Black, Hispanic, Asian, Pacific Islander, Native American, or female person; a sole proprietorship 100% owned, operated, and controlled by such a person; a partnership in which such person(s) owns at least 51% of assets and interest and has proportionate control of partnership affairs; a joint venture of HUBs; or a supplier contract between a HUB and a prime contractor under which the HUB manufactures, distributes, or warehouses and ships the supplies. Grantees must report this information on the HUB-PAR form with the quarterly financial expenditure report. A copy of the Historically Underutilized Business Progress Assessment Report (HUB-PAR) is in the application kit.

(g) CJD will not approve lease-purchase agreements or leasing of computer systems (computer hardware and software) unless the applicant demonstrates that lease-purchase is cost-effective. Applicants requesting a lease-purchase should reflect the items in budget schedule D of the grant application forms and must attach justification for requesting the lease-purchase method. Any interest charges resulting from such a purchase are not allowable as expenditures under the grant. If approved, lease-purchase is subject to the same requirements for grantee contributions as equipment purchases.

(h) The grantee will retain ultimate control of and responsibility for the grant project and any contractor shall be bound by grant agreements, grant conditions, and any other requirements applicable to the grantee.

§3.6050. Property Management Standards.

(a) CJD grantees shall use the property management standards included in the Common Rule, §§.31-.36. The full text of the Common Rule is in the Uniform Grant and Contract Management Standards (UGCMS) published by the Governor's Office of Budget and Planning. Grantees must also comply with all applicable state and local laws and regulations. This section includes the rules most applicable to CJD grants.

(b) Personal property includes all property other than real estate. It can be material property, such as equipment, or may be intangible, such as patents, copyrights, and inventions.

(c) Nonexpendable personal property and equipment are material property having a useful life of more than one year and an acquisition cost of $500 or more per unit. A grantee may use its own definition of nonexpendable personal property provided that the definition includes at least all of material personal property as defined above. CJD also includes under this definition all computer hardware, computer software, and educational films and videos, regardless of the cost.

(d) Grantees must restrict purchases of property to those items that are absolutely necessary to carry out the project effectively. In addition, grantees should be aware that CJD may disallow any cost associated with acquiring property if CJD determines that the property was unnecessary.

(e) Grantees must maintain property records for all equipment purchased with any CJD funds. All property records must be in the official grant records and must be available for review by authorized personnel.

(f) Property records must include copies of all purchase orders and invoices. They must also include an inventory listing with a description of all property; the manufacturer's serial number, model number, or identification number; the acquisition date; the location and condition of the property; the total acquisition cost including CJD funds and grantee's matching funds; and any ultimate disposition information including the date of disposal and the sale price.

(g) CJD requires a biennial equipment inventory for all equipment. This requirement is applicable beginning two years after the completion of the grant period. The grantee should retain the inventory for audit purposes.

(h) The grantee must use the property to carry out the activities of the grant-funded project unless CJD approves a request for other disposition or replacement.

(i) When an item of equipment purchased in whole or in part with CJD funds is no longer efficient or serviceable but the grantee continues to need the equipment in its grant activities, the grantee

may replace the property through trade-in or sale and purchase of new property, provided the following requirements are met.

(1) Grantees must obtain written permission from CJD to use the provisions of this section prior to entering into negotiation for the replacement or trade-in of the equipment.

(2) The value credited for the property, if a trade-in, is related to its fair market value.

(3) The replacement equipment is used for the same purposes as the original equipment.

(j) Replacement of equipment is not a disposition of equipment and the CJD share of the equipment is transferred to the replacement. The CJD share of replacement equipment is a percentage of CJD's share of the proceeds from the sale or an amount credited for trade-in equal to the percentage of CJD's share in the original purchase price. Replacement equipment is subject to the same instructions on use and disposition as the equipment that it replaced.

§3.6055. Disposition of Property.

(a) If a grantee no longer funded by CJD purchased equipment in whole or in part with CJD funds, the grantee must write to CJD for instructions on the disposition of any piece of equipment with a current per-unit fair market value of $5,000 or more. Grantees may use equipment with a current per-unit fair market value of less that $5,000 for other activities without reimbursement to CJD. The grantee may also sell the equipment and retain the proceeds without CJD approval.

(b) The request for disposition of property must include an explanation of the grantee's preferred disposition. CJD may instruct the grantee to do any of the following:

(1) If the grantee wishes to continue to use the equipment in the project or in activities similar to those of the original project, CJD may approve such action and transfer title of the equipment to the grantee.

(2) If the grantee wishes to use the equipment in activities that are not a part of the project or not in activities similar to those of the original project, CJD may approve transfer of the equipment, provided that the grantee makes compensation to CJD. The compensation to CJD is the percentage of the current per-unit fair market value of the equipment equal to the percentage of the CJD share of the original purchase price.

(3) If the grantee no longer needs the equipment, CJD may approve sale of the property. If the grantee sells the property, then it must reimburse CJD for a percentage of the sale in an amount equal to the percentage of the CJD share in the original purchase price.

(4) CJD may also instruct the grantee to transfer the equipment to another agency needing the property. If so instructed, the benefiting agency shall reimburse the grantee for the percentage of the current per unit fair market value equal to the percentage of the grantee's share in the original purchase price.

(5) If CJD instructs the grantee to dispose of the property otherwise, CJD will reimburse the grantee for costs incurred in the disposition.

§3.6060. Transfer of Title of Equipment and Nonexpendable Personal Property.

CJD reserves the right to transfer title of grant-acquired property having a unit cost of $5,000 or more to the federal government or to a third party eligible under existing statutes. Such transfers are subject to the following standards:

(1) The property must be identified in the grant or otherwise made known to the grantee in writing.

(2) CJD will issue disposition instructions within 120 calendar days after the end of grant. If CJD does not issue disposition instructions within this period, the grantee, under Grant Common Rule requirements, shall follow standards in paragraph 86d(2) of the OJP Financial Guide and, under A -110 requirements, shall follow standards in paragraphs 87b(3) and 87d(3) of the OJP Financial Guide.

(3) When title to property is transferred, the grantee will be paid an amount calculated by applying the percentage of participation in the purchase to the current fair market value of the property.

§3.6065. Transfer of Title of Real Property.

Transfer of title of real property may be to the grantor agency or to a third party designated or approved by the grantor agency. The grantee or subgrantee will be paid an amount calculated by applying the grantee's or subgrantee's percentage of participation in the purchase of the real property to the current fair market value of the property.

§3.6070. Bonding and Insurance.

Each nonprofit agency receiving funds from CJD must obtain, have on file, and submit with the grant application a fidelity bond on any employee administering any grant funds. This bond must indemnify CJD against the loss and theft of the entire amount of CJD grant funds. The cost of such a bond is an eligible expense of the grant.

§3.6075. Withholding Funds.

(a) CJD may withhold funds from a grantee. CJD will do so only when a grantee has failed to comply with established guidelines, grant conditions, or contractual agreements or when funds are depleted or insufficient to fund allocations.

(b) CJD may withhold funds from a specific project for reasons that include, but are not limited to:

(1) failure to comply with any applicable federal or state law, rule, regulation, policy, or guideline, or with the terms of any grant agreements;

(2) failure to submit reports of expenditures and the status of funds, grantee progress reports, or special required reports at the times and in the form established for such reporting;

(3) significant deficiencies or irregularities in records maintained by the grantee or its agent of operation and administration;

(4) failure to conduct the grant project according to the terms of the application for a grant, the statement of grant award, the grantee acceptance notice, or a grant adjustment notice;

(5) failure to comply with any condition that has been made a part of the statement of grant award by reference or inclusion therein, or through the issuance of a grant adjustment notice;

(6) failure to commence project operations within 45 days of the project start date; or

(7) failure to maintain proper records accounting for receipt of proceeds or property from criminal seizures and forfeitures.

(c) CJD may withhold funds from all projects operated by a grantee for reasons that include, but are not limited to:

(1) failure to respond to any deficiency listed in this section;

(2) failure to return to CJD within the required time unused grant funds remaining in the expired grant; or

(3) refusal or an unwillingness to return to CJD any grant funds improperly accounted for or expended for ineligible purposes under a grant that has expired.

(d) CJD will notify grantees of all deficient conditions constituting grounds for withholding funds and may give advance notice that CJD may withhold funds unless the grantee corrects deficient conditions by a specified date.

(e) Grantees may, within ten days of receiving notification, request in writing a reconsideration of the determination to withhold funds. The grantee should direct this request to the executive director of CJD, together with any documentation in support of the reconsideration. The executive director will review the determination to withhold funds based on the documentation submitted. CJD will send the final determination to the grantee in writing.

(f) CJD will release funds when the grantee has provided satisfactory evidence of the correction of the deficient conditions, unless CJD has terminated the grant as described below.

§3.6080. Grant Termination .

(a) The grantee shall notify CJD, in writing, of the cancellation of any approved project immediately upon the determination to cancel the project.

(b) CJD may terminate a grant for failure to comply with applicable federal or state laws, rules, regulations, policies, or guidelines; terms, conditions, standards, or stipulations of grant agreements; or terms, conditions, standards, or stipulations of any other grant awarded to the grantee.

(c) CJD may terminate grants based on findings that deficient conditions make it unlikely that the grant's objectives will be accomplished; deficient conditions cannot be corrected within a period of time judged acceptable by CJD; or a grantee has acted in bad faith.

(d) CJD will notify grantees of conditions and findings constituting grounds for termination. When a grant is terminated all unexpended or unobligated funds awarded to a grantee will revert to CJD. In addition, CJD may judge a grantee ineligible for any future award if CJD has terminated a grant for cause.

(e) In some cases, CJD may require the transfer of the grant project by moving the administration of the project to a different agency.

(f) A grantee may appeal the termination of a grant by writing to the executive director of CJD within ten days from the date of the suspension or termination notification. The grantee may submit written documentation in support of the appeal. The executive director will consider any documentation submitted by a grantee in support of an appeal. The decision of the executive director concerning an appeal of a termination will be final unless overturned by a court of competent jurisdiction.

§3.6085. Deobligation of Grant Funds.

The grantee must liquidate all properly incurred obligations under the award no later than 90 days after the end of the funding period. Final expenditure reports must be submitted at that time or on the following expenditure report if the end of the liquidation period does not fall at the end of a calendar quarter. In addition, the grantee must submit any unexpended funds and cash match shortages with the final expenditure report.

§3.6090. Payment of Outstanding Liabilities.

Grantees must properly obligate and expend all outstanding liabilities no later than 90 days after the end of the grant period. In addition, CJD cannot make any reimbursements to grantees after this same 90 day period. All payments made after the completion of the grant period must relate to obligations encumbered prior to the end of the grant period.

§3.6095. Violations of Laws.

The grantee must communicate in writing, immediately upon discovery, to CJD and, if applicable, to the local prosecutor's office, any knowledge, suspicion, or evidence of any legal violations encountered by the grantee or during monitoring visits, including misappropriation of funds, fraud, theft, embezzlement, forgery, or any serious irregularities or noncompliance with the requirements outlined in this chapter.

§3.6100. Conflict of Interest.

No personnel, board member, volunteer, agency employee, or other person affiliated with the grant project may participate in any proceeding or action where grant funds personally benefit the individual or any of his relatives. In addition, grant personnel or officials should avoid any action that might result in or create the appearance of using their official positions for private gain; giving preferential treatment to any person; losing complete independence or impartiality; making an official decision outside of official channels; or affecting adversely the confidence of the public in the integrity of the program or the Criminal Justice Division. Failure to comply with this policy may result in termination of the grant.

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

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Program Monitoring and Audits

1 TAC §§3.7000, 3.7005, 3.7010, 3.7015, 3.7020

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc16] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.7000. Monitoring.

(a) In accordance with all applicable state and federal statutes, rules, regulations, and guidelines, CJD monitors grants throughout their existence.

(b) CJD reviews progress reports and quarterly financial expenditure reports and conducts on-site monitoring visits to ensure compliance with grant requirements and to assist grantees with the day-to-day operation of their projects. On-site monitoring includes, but is not limited to, the review and verification of the:

(1) adequacy of the accounting system, project files, and administration;

(2) relationships of expenditures to the budget amounts and of actual program operations to the approved grant;

(3) accuracy of financial information, statistics on project activities, and goal achievement indicators;

(4) timeliness of submission of financial expenditure and progress reports;

(5) grantee equipment inventory; and

(6) adherence to CJD guidelines and program requirements.

(c) Grantees are required to maintain current files. CJD may make unannounced monitoring or audit visits at any time.

(d) CJD reserves the right to conduct its own monitoring visit, or contract to do so, of any grant funded.

§3.7005. Retention of Records.

Grantees must retain for three years from submission of final report all project records and records for equipment, nonexpendable personal property, and real property for a period of three years from the date of the replacement, transfer, or final disposition. Grantees must give access to these records to all CJD personnel and properly designated monitors. If legal action is pending against the grantee involving the grant project, the grantee must retain grant records for three years following resolution of the legal action or three years following the end of the final report, whichever is later.

§3.7010. Grantee Appeal and CJD Review Board.

(a) A grantee may, within 30 working days, give notice to CJD of intent to submit documentation to respond to exceptions contained in an audit or monitoring report. A three-member review board consisting of CJD personnel will review the documentation for legal, financial, and program acceptability under state and federal rules, regulations, and guidelines.

(b) The review board will make recommendations to the CJD executive director for approval, disapproval, or approval with modifications of audit or monitoring exceptions. CJD will send the written determination by the executive director to the grantee within 30 calendar days.

(c) Grantees must, within 30 calendar days, refund all funds due after a final determination by the review board approved by the CJD executive director. Failure to comply with this provision will subject participants to the provisions of §3.6075 (of this title relating to conditions for withholding funds from grantees).

§3.7015. Independent Annual Audit.

(a) CJD requires an audit of grants based on federal audit requirements. Each city, county, and council of governments awarded grants must have an independent annual financial audit of grants that expired during the preceding calendar year conducted by a certified public accountant in accordance with the requirements outlined below. The grantee must file a copy of each independent certified public accountant audit and management letter with CJD.

(b) OMB Circular A-128 sets forth requirements for state and local governments and OMB Circular A-133 sets forth audit requirements for private nonprofit corporations and institutions of higher education. They are as follows:

(1) OMB Circular Number A-128 requires that state and local governments that receive $100,000 or more in state and federal funds in any fiscal year must have a single audit for that year. State and local governments receiving at least $25,000, but less that $100,000, have the option of performing a single audit or separate program audits required by the applicable statutes and regulations.

(2) OMB Circular Number A-133 requires that institutions of higher education, hospitals, and other private nonprofit institutions that receive $100,000 or more a year in state or federal funds shall have a single audit made. Institutions of higher education, hospitals, and all private nonprofit corporations that receive awards between $25,000 and $100,000 a year have the option of having an audit made of each award. The audits must be independent and in accordance with Government Auditing Standards covering financial audits. CJD and the grantee may agree, however, on a coordinated audit approach that tailors the scope of the audit to individual circumstances.

(c) Grantees receiving less than $25,000 in CJD funds in a fiscal year are exempt from a single audit. VOCA and Crime Stoppers projects, however, must submit an audit or financial statement annually to CJD.

§3.7020. Audit Standards.

(a) Grantees are responsible for providing for an independent audit of their activities. These audits must be completed not later than 12 months following the end of the grant period. These audits shall be made annually unless a constitutional or statutory provision allows less frequent audits. Examinations must be in accordance with the financial and compliance audit provisions of the U.S. General Accounting Office Government Auditing Standards.

(b) The grantee must submit a copy of the independent audit report to CJD within 30 days following completion of the audit. The submission must include a copy of any management letters and the grantee's response to the audit.

(c) The Criminal Justice Division reserves the right to conduct its own audit, or contract to do so, of any grant funded.

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

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Governing Directives

1 TAC §3.8000

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc17] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.8000. Adoptions by Reference.

The Criminal Justice Division adopts by reference the statutes, documents, and forms of paragraphs (1)-(3) of this section that relate to the administration of CJD grants.

(1) Uniform Grant and Contract Management Standards developed under the directive of the Uniform Grant and Contract Management Act of 1981, chapter 783, Texas Government Code. The Governor's Office of Budget and Planning develops and publishes the Uniform Grant and Contract Management Standards (UGCMS) to provide uniform grant application and administrative procedures. The UGCMS have adopted the provisions of five federal circulars promulgated by the Office of Management and Budget; those are:

(A) Circular Number A-87: Cost Principles for State and Local Governments;

(B) Circular Number A-110: Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Private Nonprofit Corporations: Uniform Administrative Requirements. Attachment A (cash depositories), Attachment F (Standards for Financial Management Systems), and Attachment O (Procurement Standards);

(C) Common Rule for Circular A-102: Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, §20 (Standards for Financial Management Systems) and §36 (Procurement);

(D) Circular Number A-128: Audits of State and Local Governments; and

(E) Circular Number A-133: Audits of Institutions of Higher Education and Other Private Nonprofit Corporations.

(2) Office of Justice Programs, OJP Financial Guide, including Circular Number A-21: Cost Principles for Educational Institutions and Circular Number A-122: Cost Principles for Private Nonprofit Corporations.

(3) U.S. General Accounting Office Government Auditing Standards.

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

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Subchapter D. Criminal Justice Division Advisory Boards

Crime Stoppers Advisory Council

1 TAC §§3.8100, 3.8105, 3.8110, 3.8115, 3.8120

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc18] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.8100. Establishment.

The Council is established by Texas Civil Statues, article 4413(32a) 6(a)(11) and chapter 414 of the Texas Government Code.

§3.8105. General Powers.

The council acts in an advisory capacity to the executive director of the criminal justice division, who will relate their recommendations and those of the Criminal Justice Division to the governor as needed.

§3.8110. Composition.

The council must be composed of five members appointed by the governor with the advice and consent of the Texas Senate. At least three members must be persons who have participated in a local Crime Stoppers program. The term of office of each member is two years. At its first meeting after the beginning of each fiscal year the council shall elect from among its members a chairman and other officers that the council considers necessary.

§3.8115. Meetings.

(a) At all meetings, the latest version of Robert's Rules of Order shall govern proceedings.

(b) Meetings will be held at least annually and at other times deemed necessary by the chairman or the executive director of the criminal justice division.

§3.8120. Compensation.

All members shall serve without compensation. Necessary travel and per diem expenses may be reimbursed when such expenses are incurred in direct performance of official duties of the council. All council members will be reimbursed according to the rates set by the legislature.

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Governor's Juvenile Justice Advisory Board

1 TAC §§3.8200, 3.8205, 3.8210, 3.8215, 3.8220

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc19] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.8200. Establishment.

The board is established by governor's executive order GWB-95-6.

§3.8205. General Powers.

(a) The board acts in an advisory capacity to the executive director of the criminal justice division, who will relate their recommendations and those of the Criminal Justice Division to the governor as needed.

(b) Pursuant to federal regulations governing implementation of the Juvenile Justice and Delinquency Prevention Act, the Governor's Juvenile Justice Advisory Board is designated as the supervisory board. Duties of the supervisory board shall be as follows:

(1) Advise the Governor's Criminal Justice Division on matters pertaining to juvenile justice and delinquency prevention, including Title II of the Juvenile Justice and Delinquency Prevention Act;

(2) Participate in the development and review of the state's juvenile justice plan;

(3) Annually submit to the governor and legislature recommendations regarding state compliance with the requirements of §§223(a)(12), (13), and (14) of the Juvenile Justice and Delinquency Prevention Act; and

(4) Consult and seek advice and suggestions frequently from juveniles currently under the jurisdiction of the juvenile justice system.

(c) The Governor's Criminal Justice Division shall afford the Juvenile Justice Advisory Board the opportunity to review and comment on all juvenile justice and delinquency prevention grant applications submitted to the Governor's Criminal Justice Division. 3.8210 Composition The composition of the board will be in compliance with the federal Juvenile Justice and Delinquency Act and all regulations set by the Office of Juvenile Justice and Delinquency Prevention.

§3.8215. Meetings.

(a) At all meetings, the latest version of Robert's Rules of Order shall govern proceedings.

(b) Meetings will be held at least annually and at other times deemed necessary by the chairman or the executive director of the Criminal Justice Division.

§3.8220. Compensation.

(a) All members shall serve without compensation. Necessary travel and per diem expenses may be reimbursed when such expenses are incurred in direct performance of official duties of the Board. All board members will be reimbursed according to the rates set by the legislature.

(b) The chairman or the executive director of the Criminal Justice Division may appoint qualified persons to advise the Juvenile Justice Advisory Board concerning specific juvenile justice matters. Such persons shall serve without compensation but may be reimbursed for reasonable and necessary expenses upon approval of the executive director of the Criminal Justice Division.

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

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Governor's Drug Policy Advisory Board

1 TAC §§3.8300, 3.8305, 3.8310, 3.8315, 3.8320

The new rules are proposed under Vernon's Texas Statutes annotated Code of Criminal Procedure Article §§102.051-056[sc20] which provides the Office of the Governor, Criminal Justice Division the authority to promulgate rules consistent with the Code.

No other statutes, articles or codes are affected by these new rules.

§3.8300. Establishment.

The board is established by governor's executive order GWB-95-7.

§3.8305. General Powers.

(a) The board acts in an advisory capacity to the executive director of the criminal justice division, who will relate their recommendations and those of the criminal justice division to the governor as needed.

(b) The Advisory Board is charged with the responsibility of developing a statewide drug strategy taking into consideration suggestions from all parties interested in combating substance abuse.

(c) The Advisory Board will make recommendations for the expenditure of funds under the Omnibus Anti-Drug Abuse Act of 1988 (P.L. 100-690), will report on the expenditure of funds by all agencies receiving federal drug-abuse funds, and will perform other duties as requested by the governor or the executive director of CJD.

§3.8310. Composition.

The advisory board will consist of not more than 13 members appointed by the governor who shall serve at the pleasure of the governor. The advisory board shall be composed of representatives from education, law enforcement, and other interested organizations and of other concerned citizens. The governor shall designate a chair and vice-chair from the membership who shall serve in those positions at the pleasure of the governor.

§3.8315. Meetings.

(a) At all meetings, the latest version of Robert's Rules of Order shall govern proceedings.

(b) Meetings will be held at least annually and at other times deemed necessary by the chairman or the executive director of the Criminal Justice Division.

§3.8320. Compensation.

All members shall serve without compensation. Necessary travel and per diem expenses may be reimbursed when such expenses are incurred in direct performance of official duties of the board. All board members will be reimbursed according to the rates set by the legislature.

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TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 28. Texas Agricultural Finance Authority: Loan Guaranty Program

4 TAC §28.8, §28.10

The Board of Directors (the board) of the Texas Agricultural Finance Authority (the Authority) of the Texas Department of Agriculture proposes amendments to §28.8 and §28.10, concerning the Authority's loan guaranty program.

The amendments are proposed in order to make the loan guaranty program more efficient. The proposed amendment to §28.8 adds language to state the conditions under which a report on an application will not be presented to the board and clarifies which applications must be approved by a majority of a quorum of the board. The proposed amendment to §28.10 changes the maximum percentage of the Authority's financial commitment in loans approved under the loan guaranty program and adds a fee schedule adopted by the board for calculation of the loan guaranty fee payable by an applicant.

Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, has determined that for the first five- year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Kennedy also has 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 a more efficient loan guaranty program.

Comments on the proposal may be submitted to Robert Kennedy, Deputy Assistant Commissioner for Finance and Agribusiness Development, Texas Department of Agriculture, P. O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Agriculture Code, §58.022, which provides the Authority with the authority to adopt rules and procedures necessary for the administration of its programs including the setting and collection of fees in connection with the program; and, §58.023, which provides the Authority to adopt rules to establish criteria for eligibility of applicants and lenders under the loan guaranty program.

The Texas Agriculture Code, Chapter 58 is affected by the proposed amendments.

§28.8. Filing Requirements and Consideration of Applications.

(a)-(c) (No changes.)

(d) Board review. Staff will submit a report on each qualified application to the board,**provided that the board has directed staff to present only those applications which meet those minimum underwriting standards established in Subsection E of the Credit Policy and Procedures,** which shall include a recommendation for approval or denial. The board may, in its discretion, recommend the imposition of conditions and requirements in connection with approval of a qualified application. Approval of a qualified application will be by a majority of a quorum of the board **, except for the approval requirements identified in §28.10 (c) of this title (relating to General Terms and Conditions)**.

(e) Notification of approval. Upon conditional approval of the qualified application by the board, the Authority will notify the lender and the applicant in writing identifying the terms and conditions of the loan guaranty. The board may set certain time limits regarding the acceptance of loan commitments by the applicant and lender and time limits regarding the closing of loans by the applicant and lender; however, in no event shall the time period exceed 30 days to accept the commitment and 180 days to close the loan, provided that the board may approve one additional extension of the commitment for a period of no more than 60 days. The lender will prepare the written agreements and documents necessary to close the loan guaranty in accordance with the terms and conditions set forth in the notice of conditional approval. The Authority will send the lender and the applicant final notice of guaranty approval after review of the closing documents **by the Authority's legal counsel**. The lender will disburse the loan according to the terms of the note and/or loan agreement.

(f)-(i) (No changes.)

§28.10. General Terms and Conditions of the Authority's Financial Commitment.

(a)-(c) (No changes.)

(d) Extent of participation. The Authority shall participate in each and every loan in an amount **not to exceed** [of no less than] 80% of the Loan Guaranty Amount, not to exceed the limits in subsection (c) of this section.

(e)-(g) (No changes.)

(h) Fees. The board **has adopted the following** [shall adopt a] fee schedule which will be used to calculate the loan guaranty fee payable by the applicant to the Authority within 10 days of the initial funding of the loan. A nonrefundable application fee will be required with the qualified application. If the qualified application is approved, the application fee will be considered as part of the loan

guaranty fee. Any and all legal fees incurred by the board in issuing a guaranty and participating in any loan will be an obligation of the applicant.

Figure: 4 TAC §28.10(h)

(i)-(j) (No change.)

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614233

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 463–7583

TITLE 16. ECONOMIC REGULATION

Part VIII. Texas Racing Commission

Chapter 303. General Provisions

Subchapter D. Texas Bred Incentive Programs

16 TAC §303.96

The Texas Racing Commission proposes new §303.96, concerning the rules for the Texas Bred Incentive Program for paint horses. The new section adopts by reference the rules of the Texas Paint Horse Breed Association, the official horse breed registry in Texas paint horses.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined that for each of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the section will be that the Texas Bred Incentive Programs for paint horses will be administered fairly, efficiently, and effectively. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the new section as proposed.

Comments on the proposal may be submitted on or before November 15, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The new section is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §6.08, which authorizes the commission to adopt rules relating to the accounting, audit, and distribution of all amounts set aside for the Texas-bred program.

The proposed new section implements Texas Civil Statutes, Article 179e.

§303.96. Paint Horse Rules.

The commission adopts by reference the rules of the Texas Paint Horse Breeders Association dated September 17, 1996, regarding the administration of the Texas Bred Incentive Program for paint horses. Copies of these rules are available at the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711, or at the commission office at 8505 Cross Park Drive, #110, Austin, Texas 78754-4594.

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614307

Paula Cochran Carter

General Counsel

Texas Racing Commission

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 833–6699

Chapter 319. Veterinary Practices and Drug Testing

Subchapter A. General Provisions

16 TAC §319.7

The Texas Racing Commission proposes an amendment to §319.7, concerning medication labeling. The amendment deletes the authorization for a licensee to possess medication prescribed for an entire kennel of greyhounds.

Paula Cochran Carter, General Counsel for the Texas Racing Commission, has determined, based on the petition, that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing the section.

Ms. Carter also has determined, based on the petition, that for each of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the section will be that the commission's rules relating to possession of medication on the grounds of greyhound racetracks will be strictly enforced and it will be more difficult to illegally influence the outcome of a greyhound race through medication. There are no fiscal implications for small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposal may be submitted on or before November 15, 1996, to Paula Cochran Carter, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorize the commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; and §14.03, which authorizes the commission to adopt rules to prevent the illegally influencing of the outcome of races.

The proposed amendment implements Texas Civil Statutes, Article 179e.

§319.7. Medication Labeling.

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

[(c) The executive secretary may, from time to time, designate certain medications or classes of medications that may be prescribed for an entire kennel. A list of all mediations and classes of medications designated under this subsection must be made available in the commission office at each greyhound racetrack.]

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614311
Paula Cochran Carter
General Counsel
Texas Racing Commission
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 833–6699

TITLE 16. ECONOMIC REGULATION

Part IX. Texas State Board of Medical Examiners

Chapter 177. Certification of Non-Profit Organizations

22 TAC §177.16

The Texas State Board of Medical Examiners proposes new §177.16, concerning complaint procedure notification by non-profit health organizations.

Tim Weitz, general counsel, has determined that for the first five-year period the section is in effect there will be no fiscal implications as a result of enforcing or administering the section as proposed.

Mr. Weitz also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be to inform the public of the procedure for directing complaints to the board regarding non-profit health organizations. There will be minimal effect on small businesses. There is minimal anticipated economic cost to persons who are required to comply with the section as proposed in an anticipated amount of less than $2,000.

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

The new section is proposed under the Medical Practice Act, Texas Civil Statutes, Article 4495b, §2.09(a), which provide the Texas State Board of Medical Examiners with the authority to make rules, regulations and bylaws not inconsistent with this Act as may be necessary for the governing of its own proceedings, the performance of its duties, the regulation of the practice of medicine in this state, and the enforcement of this Act.

The new section is affected by Article 4495b, §5.01.

§177.16. Complaint Procedure Notification.

(a) Method of Notification. For the purpose of directing complaints to the board regarding health-care delivery by licensees of the board practicing through non-profit health organizations certified pursuant to the Medical Practice Act, §5.01, the non-profit health organizations which are certified or otherwise approved pursuant to the Medical Practice Act, §5.01(a) and §5.01(b), shall provide notification to the public of the name, mailing address, and telephone number of the board by displaying in a prominent location at each site of health-care delivery and readily visible to patients or potential patients, signs in English and Spanish of no less than 8 inches by 11 inches in size with the board-approved notification statement printed alone and in its entirety in black on white background in type no smaller than standard 24-point Times Roman print with no alterations, deletions, or additions to the language of the board-approved statement.

(b) Approved English Notification Statement. The following notification statement in English is approved by the board for purposes of these rules:
Figure 1: 22 TAC §177.16(b)

(c) Approved Spanish Notification Statement. The following notification statement in Spanish is approved by the board for purposes of these rules:
Figure 2: 22 TAC §177.16(c)

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614271
Bruce A. Levy, M.D., J.D.
Executive Director
Texas State Board of Medical Examiners
Proposed date of adoption: November 11, 1996
For further information, please call: (512) 305–7016

Part XXII. Texas State Board of Public Accountancy

Chapter 511. Certification as CPA

Certification by Examination

22 TAC §511.21

The Texas State Board of Public Accountancy proposes an amendment to §511.21, concerning Application.

The proposed amendment to §511.21 requires applicants to include their Social Security numbers.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be better tracking and identifying of applicants through their social

security identifier. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law.

The rule implements Texas Civil Statutes, Article 41a-1, §6.

§511.21. Application.

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

(c) Each applicant shall submit his social security number on the forms prescribed by the board. Such information shall be considered confidential and can only be disclosed under the provisions of §511.105 of this title (relating to Confidentiality) and the Act, §25.

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.

Issued in Austin, Texas, on September 26, 1996.

TRD-9614322
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 505–5566

Educational Requirements

22 TAC §511.57

The Texas State Board of Public Accountancy proposes an amendment to § 511.57, concerning Definition of Accounting Courses.

The proposed amendment to §511.57 recognizes accounting internship programs and accepts the programs, under certain conditions, as other accounting courses.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be that accounting students may participate in internship programs and receive credit from the board. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §12(e)(1) which allows the board to accept accounting courses as defined in board rules.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §12.

§511.57. Definition of Accounting Courses.

The board will accept not fewer than 30 passing semester hours of accounting courses (without repeat), taken at a recognized educational institution shown on official transcripts, of which 20 semester hours must be in core accounting courses, in the following subject areas:

(1) (No change.)

(2) other accounting courses:

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

(D) an accounting internship program which meets the following requirements:

***(i)* the knowledge gained is equal to or greater than the knowledge gained in a traditional classroom setting;**

***(ii)* the employing firm provides a formal training program;**

***(iii)* the employing firm provides the faculty coordinator and the student with the objectives to be met during the internship;**

***(iv)* the employing firm provides an evaluation of the student at the conclusion of the internship, provides a letter describing the duties performed and the supervision to the student, and provides a copy of the documentation to the faculty coordinator and the student;**

***(v)* the internship is approved by the faculty advisor;**

***(vi)* the student keeps a diary comprising a chronological list of all work experience gained in the internship;**

***(vii)* the student writes a paper demonstrating the knowledge gained in the internship;**

***(viii)* the student receives not more than 3 semester hours of credit for the internship (credit for only one internship course will be granted by the board); and**

***(ix)* the student and/or faculty coordinator provides evidence of all items upon request by the board;**

(E) [(D)] any other course which is principally accounting or auditing in nature but which may be designated by some other name (and the verification of which is obtained in writing from the particular college or university). After the November 1997 examination, elementary accounting may not be considered under this title.

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.

Issued in Austin, Texas, on September 26, 1996.

TRD-9614323

William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 505–5566

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Chapter 523. Continuing Professional Education

Continuing Professional Education Standards

22 TAC §523.29

The Texas State Board of Public Accountancy proposes an amendment to §523.29, concerning Minimum Hours Required as a Participant.

The proposed amendment to §523.29 allows continuing professional education credit to be awarded for self-study courses.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be allowing CPAs to acquire their continuing professional education courses through self-study. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §15A which requires licensees to complete continuing professional education courses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15A.

§523.29. Minimum Hours Required as a Participant.

A minimum of 50% **of the** requirement **provided for in §523.27 of this title (relating to credits for Instructors and Discussion Leaders)** must be **received** from [involvement as a participant in] a qualified continuing professional education program **in classroom instruction and/or self-study.**

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.

Issued in Austin, Texas, on September 26, 1996.

TRD-9614324
William Treacy
Executive Director
Texas State Board of Public Accountancy
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 505–5566

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22 TAC §523.31

The Texas State Board of Public Accountancy proposes an amendment to §523.31, concerning Alternative Sources of Continuing Professional Education.

The proposed amendment to §523.31 adds two committees as qualifying for continuing professional education credit.

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

Mr. Treacy also has determined that during the first five-year period the rule is in effect the anticipated public benefit as a result of enforcing or administering the rule will be allowing CPAs to earn continuing professional education credit for their membership in the two committees. There is no effect on small businesses. There is no anticipated economic cost to persons required to comply with the section as proposed.

Comments on the proposal may be submitted to J. Randel (Jerry) Hill, General Counsel, 333 Guadalupe, Tower III, Suite 900, Austin, Texas, 78701-3900.

The amendment is proposed under Texas Civil Statutes, Article 41a-1, §6, which provide the Texas State Board of Public Accountancy with the authority to make such rules as may be necessary or advisable to carry in effect the purposes of the law, and §15A which requires licensees to complete continuing professional education courses.

The rule implements Texas Civil Statutes, Article 41a-1, §6 and §15A.

§523.31. Alternative Sources of Continuing Professional Education.

(a) Credit hours may be claimed from other organizations not recognized as formal continuing professional education sponsors. Credit from membership in the committees listed can be claimed using 50 minutes per contact hour at meetings to equal one credit hour:

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

(5) Financial Executives Institute's Committee on Corporate Reporting (FEI/CCR); [and]

(6) National Association of Accountants' Management Accounting Practices Committee[.]**;**

(7) AICPA's Accounting and Review Services Committee (ARSC); and

(8) Statements on Standards for Accounting Review Services (SSARS) Technical Issues Committee.

(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.

Issued in Austin, Texas, on September 26, 1996.

TRD-9614325
William Treacy
Executive Director

Texas State Board of Public Accountancy

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 505–5566

Part XXXI. Texas State Board of Examiners of Dietitians

Chapter 711. Dietitians

22 TAC §711.12

The Texas State Board of Examiners of Dietitians (board) proposes amendments to §711.12, concerning licensed dietitians and provisional licensed dietitians. Specifically, the section covers the renewal of a license. The amendment clarifies the renewal process by specifying how long a current license will be considered active if the licensee mailed the required documentation prior to the expiration date of the license.

Debbie Bradford, Executive Secretary, has determined that for the first five-year period the section, as proposed, is in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the section.

Ms. Bradford also has determined that for each year of the first five years that this section is in effect, the public benefit anticipated as a result of enforcing this section will be to clarify the renewal process for dietitians. There will be no cost to small businesses. There will be no effect on persons who may be required to comply with the section. There will be no effect on local employment.

Comments on the proposal may be submitted to Debbie Bradford, Executive Secretary, Texas State Board of Examiners of Dietitians, 1100 West 49th Street, Austin, Texas 78756-3183, Telephone (512) 834-6601. Comments will be accepted for 30 days from the date of publication of this proposal in the *Texas Register*.

The amendment is proposed under the Licensed Dietitian Act, Texas Civil Statutes, Article 4512h, §6, which provides the Texas State Board of Examiners of Dietitians with the authority to adopt rules concerning the regulation and licensure of dietitians.

The amendment affects Texas Civil Statutes, Article 4512h.

§711.12. License Renewal.

(a)-(b) (No changes.)

(c) License renewal requirements.

(1)-(2) (No changes.)

(3) A licensee has renewed the license when the licensee has mailed the renewal form**,** [and] the required renewal fee**, and the statement of continuing education** to the executive secretary prior to the expiration date of the license. The postmark date shall be considered as the date of mailing. **The current license will be considered active until the renewal is issued or finally denied.**

(4) (No changes.)

(d)-(f) (No changes.)

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

Issued in Austin, Texas, on October 2, 1996.

TRD-9614394

Susan K. Steeg

General Counsel

Texas State Board of Examiners of Dietitians

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 458–7236

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 281. Applications Processing

Subchapter A. Applications Processing

30 TAC §281.22

The Texas Natural Resource Conservation Commission (commission) proposes an amendment to §281.22, concerning Referral to Commission. The purpose of the proposed amendment is to maintain consistency with federal regulations applicable to the state Underground Injection Control (UIC) Program and to maintain state primacy for the UIC Program.

Proposed §281.22 is an amendment, per 40 Code of Federal Regulations (CFR) §144.31(d), to prohibit the issuance of an injection well permit until the agency has received a complete application.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the section as proposed is in effect there are no significant fiscal implications anticipated for state or local governments as a result of enforcement and administration of the section.

Mr. Minick has also determined that for the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcement of and compliance with the section will be clarification of existing regulations relating to underground injection control and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no costs to affected parties that would not otherwise result from compliance with the existing federal regulation proposed for incorporation. There are no additional costs anticipated for any person required to comply with the section as proposed.

The commission has prepared a Takings Impact Assessment for this rule pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rule is to incorporate federal language into current state regulations so that the Underground Injection Control (UIC) program can maintain compliance with the federal program. The rule will substantially advance this specific purpose by allowing the commission to maintain primacy, and thus state control, for the UIC program. Promulga-

tion and enforcement of this rule amendment will not create a burden on private real property.

This rule amendment is administrative in nature and does not impose any additional or substantial burden on private real property. Underground Injection Control (UIC) facilities are already subject to this federal requirement, this amendment merely incorporates the federal requirement into the state UIC program. Also, because this rulemaking is reasonably taken to fulfill an obligation mandated by Federal Law, this rule amendment is excepted from the Private Real Property Preservation Act pursuant to Texas Government Code (the "Act"), §2007.3(b)(4).

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log Number 96140-281-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

The amendment is proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §361.017 and §361.024 (Vernon 1992), which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendment implements Texas Water Code §27.019.

§281.22. Referral to Commission.

(a) (No change.)

(b) For applications involving hazardous waste **or an injection well,** the commission shall not issue a permit before receiving a complete application for a permit. **For underground injection wells, an application for a permit is complete when the executive director receives an application form and any supplemental information which are completed to his or her satisfaction. For underground injection wells, the completeness of any application for a permit shall be judged independently of the status of any other permit application or permit for the same facility or activity.** However, a facility may be eligible for a permit by rule or may be subject to an emergency order.

(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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614348

Kevin McCalla

Director, Legal Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 239–6087

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Chapter 305. Consolidated Permits

The Texas Natural Resource Conservation Commission (commission) proposes amendments to §§305.29, 305.30, 305.62, 305.125, 305.127, 305.151, 305.152, and 305.154, and new §305.72, concerning Consolidated Permits. The purposes of these proposed changes are: to maintain consistency with federal regulations applicable to the state Underground Injection Control (UIC) Program, to maintain state primacy for the UIC Program, to clarify existing rules and make editorial changes, and to provide more flexibility in modifying permits.

Proposed §305.29(a), (b), (c) and (d) contain amendments to make minor editorial changes. Proposed §305.29(d) also contains an amendment, per 40 Code of Federal Regulations (CFR) §144.34(b), to limit the duration of UIC emergency orders to periods no longer than needed to prevent the hazard.

Proposed §305.30(a), (b), (c), (d), and (f) contain amendments to make minor editorial changes. Proposed §305.30(e) contains amendments to make minor editorial changes and §305.30(e)(5) is being added to incorporate, per 40 CFR §144.34(b), a limit on the duration of UIC emergency orders to periods no longer than necessary to prevent the hazard.

Proposed §305.62(a), (b), (c), and (d) contain amendments to make editorial changes. Section 305.62(d)(6) is also being amended, per 40 CFR §144.39(a)(2), to add to the present list of good causes for amendments, one for UIC area permits, i.e., any information that cumulative effects on the environment are unacceptable.

Proposed new §305.72 is being added, per 40 CFR §144.41, to allow for minor modifications to UIC permits.

Proposed §305.125 contains amendments to make minor editorial changes throughout the section. Section 305.125(5) contains an addition, under 40 CFR §144.51(e), to elaborate on proper operation and maintenance.

Proposed §305.127 contains amendments to make editorial changes throughout the section. Under 40 CFR §144.36(a), §305.127(1)(A)(i) is amended to also make term limits applicable to Class V well permits. A new §305.127(3)(e) is added, per 40 CFR §§144.53, to establish interim requirements schedules for compliance.

Proposed §305.151 contains amendments, per 40 CFR §144.51(o), to make standard permit conditions in Chapter 305, Subchapter H (relating to Additional Conditions for Injection Well Permits) applicable to Class V well permits.

Proposed §305.152 contains an amendment at the beginning to add that corrective action requirements are limited to Class I and III wells only; as a result, the subsections are renumbered as paragraphs. Section 305.152(1), (4), and (6) are being amended to make editorial changes. Section 305.152(3) is being amended, per 40 CFR §144.55(b)(1), to make the requirement for a corrective action compliance schedule in the permit for an existing well mandatory.

Proposed §305.154(a), (a)(2), (3), and (9) renumbered to (8) contain amendments to make editorial changes. Section 305.154(a)(4) is amended, per 40 CFR §144.51(m), re-

garding requirements prior to commencing injection. Section 305.154(a)(6) is amended, per 40 CFR §§124.6(d)(3) and 144.54, to elaborate on monitoring requirements. Section 305.154(a)(7) is amended, per 40 CFR §144.52(a)(6), to expand on well pugging and abandonment after cessation of operations. New §305.154(a)(9) is added to incorporate financial assurance requirements, per 40 CFR §144.52(a)(7). New §305.154(a)(11) is added to incorporate liability insurance requirements, per Texas Water Code §27.051(d)(3). New §305.154(b) is added to incorporate area permit requirements, per 40 CFR §144.33(b) and (c).

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five-year period the sections as proposed are in effect there are no significant fiscal implications anticipated for state or local governments as a result of enforcement and administration of the sections.

Mr. Minick has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be clarification of existing regulations relating to underground injection control and consistency between state and federal regulations. Compliance with the proposed state regulations will result in no costs to affected parties that would not otherwise result from compliance with the existing federal regulation proposed for incorporation. There are no additional costs anticipated for any person required to comply with the sections as proposed.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to incorporate federal language into current state regulations so that the Underground Injection Control (UIC) program can maintain compliance with the federal program. The rules will substantially advance this specific purpose by allowing the commission to maintain primacy, and thus state control, for the UIC program. Promulgation and enforcement of these rule amendments will not create a burden on private real property.

These rule amendments are administrative in nature and do not impose any additional or substantial burden on private real property. Underground Injection Control (UIC) facilities are already subject to this federal requirement, this amendment merely incorporates the federal requirement into the state UIC program. Also, because this rulemaking is reasonably taken to fulfill an obligation mandated by Federal Law, this rule amendment is excepted from the Private Real Property Preservation Act pursuant to Texas Government Code (the "Act"), §2007.3(b)(4).

Written comments may be submitted by mail to Bettie Bell, Office of Policy and Regulatory Development, MC205, P.O. Box 13087, Austin, Texas 78711-3087; or by fax at (512) 239-4808. All comments must be received within 30 days following the date of this publication and should reference Rule Log Number 96140-281-WS. Comments received by 5:00 p.m. on that date will be considered by the commission prior to any final action on the proposal. For further information, please contact Kathy Vail at (512) 239-6637.

Subchapter B. Emergency Orders, Temporary Orders, and Executive Director Authorizations

30 TAC §305.29, §305.30

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §361.017 and §361.024 (Vernon 1992), which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

§305.29. Emergency Orders for Solid Waste Activities.

(a) The commission may issue **a** [an] **mandatory or prohibitory** emergency order[, either mandatory or prohibitory in nature,] regarding any activity of solid waste management within its jurisdiction, whether **the** [such] activity is covered by a permit or not, if the commission determines that an emergency exists requiring immediate action to protect [the] public health and safety or the environment. The order may be issued without notice and hearing, or with such notice and hearing as the commission deems practicable under the circumstances.

(b) If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing **before** [to be held by] the commission [in accordance with commission rules, so as] to affirm, modify, or set aside the [emergency] order.

(c) The requirements of **Health and Safety Code §361.088** [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §4(e)(4)], relating to [public] notice do not apply to a hearing to affirm, modify or set aside an emergency order issued under this section, but such general notice of the hearing shall be given in accordance with commission rules.

(d) **An** [Any] emergency order issued under this section shall not exceed 90 days in duration but may be renewed. **For emergency orders affecting UIC permits, the duration may be no longer than required to prevent the hazard.**

§305.30. Emergency Actions Concerning Hazardous Waste.

(a) Whenever there is good reason to believe that the storage, processing, or disposal of hazardous waste should be authorized [in order] to alleviate an imminent and substantial endangerment to human health or safety or the environment and if there are no alternative, permitted facilities [that are] reasonably available for the proper management of the waste, the commission, on its own motion or the request of the executive director or any other party, may issue an emergency order authorizing the processing, storage, or disposal of the hazardous waste at a non-permitted facility or at a permitted facility with no authorization under its permit to receive the hazardous waste in need of immediate management.

(b) A party, other than the executive director, requesting **such** an emergency order [approving the storage, processing or disposal of hazardous waste], shall file a written request with the executive director setting forth the reason for the request including a description of the imminent and substantial endangerment to human health or safety or the environment, and alternatives investigated.

(c) The executive director shall review the request and may require the **requesting party** [applicant for an emergency order] to supply additional information as may be reasonably required to assist the commission in making the [necessary] findings set out in subsection (a) of this section.

(d) The executive director shall forward the request [for an emergency order] and the executive director's recommendation, including any proposed emergency order and findings to the commission.

(e) **An** [Any] emergency order issued by commission under this section:

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

(3) may be terminated by the commission at any time without notice and hearing if it determines that termination is appropriate to protect human health or the environment; [and]

(4) shall incorporate, to the extent possible and not inconsistent with the emergency situation, all applicable requirements of this chapter and Chapter 335 of this title (relating to Industrial Solid Waste and Municipal Hazardous Waste)**; and**[.]

(5) for UIC permits issued under this section, shall be for no longer duration than required to prevent the hazard.

(f) Public notice shall accompany the emergency order**,**[. The notice] shall allow at least 45 days for public comment and shall be given at least 30 days before the hearing on the emergency order. Public notice of the [emergency] order may be given at the same time as public notice and opportunity for comment on the [emergency] order, and the two notices may be combined. If an emergency order is issued without a hearing, the commission shall fix a time and place for a hearing **before** [to be held by] the commission [in accordance with the commission rules, so as] to affirm, modify, or set aside the emergency order. The notice shall include:

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

(6) the name and address of the commission (the office granting the [emergency] order).

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.

Issued in Austin, Texas, on October 1, 1996.

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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Subchapter D. Amendments, Modifications, Renewals, Transfers, Corrections, Revocation, and Suspension of Permits

30 TAC §305.62, §305.72

The amendment and new rule are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to propose rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §361.017 and §361.024, which further authorizes the commission to propose rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendment and new rule implement Texas Water Code §27.019.

§305.62. Amendment.

(a) Causes for amendment. Except as provided in §305.70 of this title (relating to Municipal Solid Waste Class I Modifications), §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee), and in §305.66 of this title (relating to Corrections of Permits), a change in a term, condition, or provision of a permit requires an amendment. The permittee or an affected person may request an amendment [to a permit]. If the permittee requests an amendment, the application shall be processed in accordance with Chapter 281 of this title (relating to Applications Processing). If the permittee requests a modification of a hazardous or industrial solid waste permit, the application shall be processed in accordance with §305.69 of this title (relating to Solid Waste Permit Modification at the Request of the Permittee). If the permittee requests a modification of a municipal solid waste permit, the application shall be processed in accordance with §305.70 of this title (relating to Municipal Solid Waste Class I Modifications). If an affected person requests an amendment, **the** [such] request shall be submitted to the executive director for review. If the executive director determines **the** [such a] request is not justified, the executive director will respond within 60 days of submittal of the request, stating the reasons for that determination. The person requesting such amendment may petition the commission for a review of the request and the executive director's recommendation. If the executive director determines that such a request is justified, the amendment will be processed in accordance with subsections (d) and (f) of this section.

(b) Application for amendment. An application for [an] amendment [to a permit] shall include all requested changes to the permit. Information sufficient to review the application shall be submitted in the form and manner and under the procedures specified in §§305.41-305.53 of this title (relating to Application for Permit). The application shall include a statement describing the reason for the requested changes.

(c) Types of amendments.

(1) (No change.)

(2) A minor amendment is an amendment to improve or maintain the permitted quality or method of disposal of waste, or injection of fluid if there is neither a significant increase of the quantity of waste or fluid to be discharged or injected nor a material change in the pattern or place of discharge of injection[, except a minor amendment to a Texas pollutant discharge elimination system (TPDES) permit which is defined in subparagraph C of this paragraph]. A minor amendment includes any other change to a permit issued under this chapter that will not cause**,** [a potential deterioration of quality of water in the state] nor relax a standard or criterion which may result in**,** a potential deterioration of quality of water in the state. A minor amendment also includes, but is not limited to[, the following]:

(A) - (B) (No change.)

(C) for TPDES permits [only the following changes constitute minor amendments]:

(i) **correcting** [correct] typographical errors;

[(ii) require more frequent monitoring or reporting by the permittee;]

[(iii) change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;]

[(iv) change a new source construction schedule or delete a point source outfall as follows:]

(ii) [(I)] **changing** [change] the construction schedule for a discharger which is a new source. No such change shall affect a discharger's obligation to have all pollution control equipment installed and in operation prior to discharge under 40 Code of Federal Regulations (CFR) §122.19;

(iii) [(II)] **deleting** [delete] a point source outfall when the discharge from that outfall is terminated and does not result in discharge of pollutants from other outfalls except in accordance with permit limits;

(iv)*[(v)]* when the permit becomes final and effective on or after March 9, 1982, **conforming** [conform] to changes respecting to 40 CFR §§122.41(e),(l),(m)(4)(i)(B) and 122.42(a) issued September 26, 1984; or

(v)*[(vi)]* incorporate conditions of a public owned treatment work (POTW) pretreatment program [that has been] approved in accordance with the procedures in 40 CFR §403.11, as adopted by §315.1 of this title (relating to General Pretreatment Regulations for Existing and New Sources of Pollution) as enforceable conditions of the POTW's permit.

(d) Good cause for amendments. If good cause exists, the executive director may initiate and the commission may order an amendment to a permit and the executive director may request an updated application if necessary. Good cause includes but is not limited to [the following]:

(1) (No change.)

(2) information, not available at the time of permit issuance, is received by the executive director, [and such information] **justifying** [justifies] amendment of existing permit conditions;

(3)-(5) (No change.)

(6) for Underground Injection Control (UIC) area permits, any information that cumulative effects on the environment are unacceptable.

(e)-(h) (No change.)

§305.72. Underground Injection Control (UIC) Permit Modifications at the Request of the Permittee.

(a) This section applies only to Underground Injection Control permits.

(b) With the permittee's consent, the executive director may modify administratively a permit to make the corrections or allowances for changes in the permitted activity listed in this section, without following the procedures and notice requirements of this chapter. Any change to the permit not processed as a minor modification under this section must be made for cause and in compliance with appropriate public notice requirements. Minor modifications may only:

(1) Correct typographical errors;

(2) Require more frequent monitoring or reporting by the permittee;

(3) Change an interim compliance date in a schedule of compliance, provided the new date is not more than 120 days after the date specified in the existing permit and does not interfere with attainment of the final compliance date requirement;

(4) Change quantities or types of fluids injected which are within the capacity of the facility as permitted and in the judgement of the executive director, would not interfere with the operation of the facility or its ability to meet conditions described in the permit and would not change its classification;

(5) Change construction requirements, provided that the alterations comply with the requirements of Chapter 331 of this title (relating to Underground Injection Control); or

(6) Amend a plugging and abandonment plan which has been updated under §305.154(7) of this title (relating to 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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Subchapter F. Permit Characteristics and Conditions

30 TAC §305.125, §305.127

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §361.017 and §361.024 (Vernon 1992), which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code §27.019.

§305.125. Standard Permit Conditions.

Conditions [The following conditions are] applicable to all permits issued **under** [within the scope of] this chapter, and **which** shall be incorporated into each permit expressly or by reference to this chapter **are:** [.]

(1) The permittee has a duty to comply with all **permit** conditions [of the permit]. Failure to comply with any permit

condition **is** [constitutes] a violation of the permit and **statutes under which it was issued** [the Texas Water Code or the Texas Solid Waste Disposal Act, and for Texas pollutant discharge elimination system (TPDES) permits the Clean Water Act, (CWA)] and is grounds for enforcement action, for permit amendment, revocation or suspension, or for denial of a permit renewal application **or** [of] an application for a permit for another facility.

(2) The permittee must apply for an amendment or renewal **before the** [prior to] expiration of the existing permit in order to continue a permitted activity after the expiration date of the permit. Authorization to continue such activity [will terminate] **terminates** upon the effective denial of said application.

(3) It **is** [shall] not [be] a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity [in order] to maintain compliance with the **permit** conditions [of the permit].

(4) (No change.)

(5) The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) [which are] installed or used by the permittee to achieve compliance with the **permit** conditions [of the permit]. **For UIC permits, proper operation and maintenance includes effective performance, adequate funding, adequate operator staffing and training, and adequate laboratory and process controls, including appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems only when necessary to achieve compliance with the permit conditions.**

(6) The permittee shall furnish to the executive director, upon request and within a reasonable time, any information to determine whether cause exists for amending, revoking, suspending, or terminating the permit**, and** [. The permittee shall also furnish to the executive director, upon request,] copies of records required to be kept by the permit.

(7) The permittee shall give notice to the executive director **before** [prior to] physical alterations or additions to the permitted facility if such alterations or additions would require a permit amendment or result in a violation of permit requirements.

(8) (No change.)

(9) The permittee shall report any noncompliance to the executive director which may endanger human health or safety, or the environment.

(A) **Such** [Report of such] information shall be provided orally within 24 hours from the time the permittee becomes aware of the noncompliance. A written submission [of such information] shall also be provided within five days of the time the permittee becomes aware of the noncompliance. The written submission shall contain a description of the noncompliance and its cause; the potential danger to human health or safety, or the environment; the period of noncompliance, including exact dates and times; if the noncompliance has not been corrected, the [anticipated] time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent recurrence of the noncompliance, and to mitigate its adverse effects.

(B) The following [shall be included as information which] must be reported within 24 hours under this paragraph.

(i) (No change.)

(ii) violation of a maximum daily discharge limitation for any [of the] pollutants listed in a TPDES permit to be reported within 24 hours.

(10) Inspection and entry shall be allowed **under** [as prescribed in the] Texas Water Code[,] Chapters 26-28, **Health and Safety Code §§361.032-361.033 and 361.037,** [the Texas Solid Waste Disposal Act, Texas Civil Statutes, Article 4477-7, §7,] and 40 Code of Federal Regulations (CFR) §122.41(i). The statement in Texas Water Code §26.014 that commission entry of a facility shall occur in accordance with an establishment's rules and regulations concerning safety, internal security, and fire protection is not grounds for denial or restriction of entry to any part of the facility, but merely describes the commission's duty to observe appropriate rules and regulations during an inspection.

(11) Monitoring and reporting requirements are as follows:

(A) (No change.)

(B) Except for records of monitoring information required by **a** [this] permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five years (or longer as required by 40 CFR Part 503), monitoring and reporting records, including strip charts and records of calibration and maintenance, copies of all records required by the permit, records of all data used to complete the application for this permit, and the certification required by 40 CFR §264.73(b)(9) shall be retained at the facility site for a period of three years from the date of the record or sample, measurement, report, application, or certification. This period **shall** [may] be extended at the request of the executive director.

(C) Records of monitoring activities shall include [the following]:

(i)- (vi) (No change.)

(12)-(19) (No change.)

(20) The permittee is subject to administrative, civil, and criminal penalties, as applicable, **under** [pursuant to the] Texas Water Code §§26.136, 26.212, and 26.213, for violations including, but not limited to, the following:

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

§305.127. Conditions to be Determined for Individual Permits.

Conditions [The following conditions are] to be determined on a case-by-case basis according to the criteria set forth herein, and when applicable, [shall be] incorporated into the permit expressly or by reference**, are:**[.]

(1) Duration.

(A) Injection well permits.

(i) Permits for Class I **and Class V** wells shall be [effective] for a fixed term not to exceed ten years.

(ii) Permits for Class III wells or projects may be [effective] for the life of the well or project, and shall be reviewed at least once every five years.

(B) Solid waste permits.

(i) Hazardous waste permits shall be [effective] for a fixed term not to exceed ten years.

(ii) Other solid waste permits may be [effective] for the life of the project.

(iii) (No change.)

(C) Waste discharge permits.

(i) Texas pollutant discharge elimination system (TPDES) permits, including sludge permits, shall be [effective] for a term not to exceed five years.

(ii) All other permits shall be [effective] as follows:

(I) Permits which authorize a direct discharge of wastewater into a surface drainageway shall be [effective] for a term not to exceed five years.

(II) Confined animal feeding operation permits may be [effective] for the life of the project.

(III) Other wastewater permits, including permits which regulate land disposal systems, shall be [effective] for a term not to exceed ten years.

(D) Drilled or mined shaft permits. Drilled or mined shaft permits which authorize operation of a drilled or mined shaft shall be [effective] for a term not to exceed ten years.

(E) (No change.)

(F) Duration of permit. The executive director may recommend that a permit be issued and the commission may issue any permit, for a duration [that is] less than the full allowable term under this section.

(2) (No change.)

(3) Schedule of compliance.

(A) A schedule of compliance prescribing a timetable for achieving compliance with the permit conditions, the appropriate **law** [act], and regulations may be incorporated into a permit. The schedule shall require compliance as soon as possible and may set interim dates of compliance. For injection wells, compliance shall be required not later than three years after the effective date of the permit. For TPDES permits the schedule of compliance shall require compliance not later than authorized by Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

(B) - (C) (No change.)

(D) For TPDES permits the following additional conditions [for schedules of compliance] apply:

(i)-(iii) (No change.)

(E) For UIC permits, the time for compliance shall require compliance as soon as possible, and in no case later than three years after the effective date of the permit. Except as provided in clause (iii)(I)(-b-) of this subparagraph, if a permit establishes a schedule of compliance which exceeds one year from the date of permit issuance, the schedule shall set forth interim requirements and the dates for their achievement.

***(i)* The time between interim dates shall not exceed one year.**

***(ii)* If the time necessary for completion of any interim requirement is more than one year and is not readily divisible into stages for completion, the permit shall specify interim dates for the submission of reports of progress toward completion of the interim requirements and indicate a projected completion date.**

***(iii)* A permit applicant or permittee may cease conducting regulated activities (by plugging and abandonment) rather than continue to operate and meet permit requirements as follows:**

***(I)* If the permittee decides to cease conducting regulated activities at a given time within the term of a permit which has already been issued:**

(-a-) The permit may be modified to contain a new or additional schedule leading to timely cessation of activities; or

(-b-) The permittee shall cease conducting permitted activities before noncompliance with any interim or final compliance schedule requirement already specified in the permit.

***(II)* If the decision to cease conducting regulated activities is made before issuance of a permit whose term will include the ceasation date, the permit shall contain a schedule leading to ceasation of activities which will ensure timely compliance with applicable requirements.**

***(III)* If the permittee is undecided whether to cease conducting regulated activities, the executive director may issue or modify a permit to contain two schedules as follows:**

(-a-) Both schedules shall contain an identical interim deadline requiring a final decision on whether to cease conducting regulated activities no later than a date which ensures sufficient time to comply with applicable requirements in a timely manner if the decision is to continue conducting regulated activities;

(-b-) One schedule shall lead to timely compliance with applicable requirements;

(-c-) The second schedule shall lead to cessation of regulated activities by a date which will ensure timely compliance with applicable requirements;

(-d-) Each permit containing two schedules shall include a requirement that after the permittee has made a final decision under item (-a-) of this subclause, it shall follow the schedule leading to compliance if the decision is to continue conducting regulated activities, and follow the schedule leading to ceasation if the decision is to cease conducting regulated activities.

***(IV)* The applicant's or permittee's decision to cease conducting regulated activities shall be evidenced by a firm public commitment satisfactory to the executive director, such as a resolution of the board of directors of a corporation.**

(4)-(6) (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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Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
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Subchapter H. Additional Conditions for Injection Well Permits

30 TAC §§305.151, 305.152, 305.154

The amendments are proposed under the Texas Water Code, §§5.103, 5.105, and 27.019, which authorizes the commission to promulgate rules necessary to carry out the powers and duties under the provisions of the Texas Water Code and other laws of the state, and under Texas Health and Safety Code §361.017 and §361.024, which further authorizes the commission to promulgate rules necessary to manage industrial solid waste and municipal solid and hazardous wastes.

The proposed amendments implement Texas Water Code, §27.019.

§305.151. Applicability.
Unless stated otherwise, the following conditions apply to all Class I**,** [and] Class III**, and Class V** injection well permits and shall be incorporated into the permit expressly or by reference. [The commission may require such conditions for Class V injection well permits as are necessary to prevent pollution of fresh water.] These conditions are in addition to those set forth in §§305.121-305.128 of this title (relating to Permit Characteristics and Conditions).

§305.152. Corrective Action.
For Class I and III wells only:

(1)[(a)] For [such] wells within the area of review which are inadequately constructed, completed, or abandoned, and which as a result of the injection activities may cause the pollution of fresh water, the commission shall prescribe or incorporate into the permit [a] **conditions** [condition] requiring corrective action adequate to prevent such pollution. Corrective action will be required unless the owner or operator demonstrates to the executive director that, despite the owner or operator's best efforts, he is unable to obtain the necessary permission to undertake such action.

(2)[(b)] The criteria of §331.44 of this title (relating to Corrective Action Standards) will be used to determine adequacy.

(3)[(c)] A permit issued for an existing injection well requiring corrective action **shall** [may] include a compliance schedule **in compliance with §305.127(3)(E) of this title (relating to Conditions to be Determined for Individual Permits)** prescribing the time within which [the] corrective action must be completed.

(4)[(d)] As part of the corrective action plan, the commission may impose an injection pressure limitation that does not cause the pressure in the injection zone to exceed hydrostatic pressure in those wells described in **paragraph (1) of this section** [subsection (a) of this section], which condition shall expire upon [adequate] completion of all corrective action measures.

(5)[(e)] Action prescribed by a corrective action plan for new wells or new areas must be completed to the satisfaction of the executive director before operation of the well begins.

(6)[(f)] **If** [In the event that, after an authorization for injection has been granted,] additional information is submitted or discovered **, after an authorization for injection has been granted,** that a well within the [applicable] area of review might pose a hazard to a freshwater aquifer, the commission may prescribe a corrective action plan and compliance schedule as a condition for continued injection activities.

§305.154. Standards.

(a) In addition to other standard permit conditions listed elsewhere in this chapter, the following conditions and other applicable standards listed in Chapter 331 of this title (relating to Underground Injection Control) shall be incorporated into each permit expressly or by reference to this chapter. The commission may impose stricter standards where appropriate. [Although the commission may impose stricter standards where appropriate, at a minimum the permittee shall comply with the standards prescribed by Chapter 331 of this title (relating to Underground Injection Control), and the rules referenced herein:]

(1) (No change.)

(2) Compliance schedule. **See §305.127(3)(E) of this title (relating to Schedule of Compliance).** [The commission may establish a compliance schedule for existing wells to achieve compliance with the requirements of this section.]

(3) Construction plans. Changes in construction plans shall be approved [by certification] under §331.45 of this title (relating to **Executive Director Approval** [Certification] of Construction and Completion), or, **by minor modification according to §305.72 of this title (relating to UIC Permit Modifications at the Request of the Permittee).** [if required, by permit amendment before such changes may be physically incorporated into construction of the well.]

(4) Commencing operations. Commencement of injection operations **before** [prior to] **approval** [certification] by the executive director **of** [that] construction and completion **is** [are compliant shall constitute] a violation of the permit and may be considered grounds for revocation or suspension of the permit, **and** [as well as] for enforcement action. **Except for new wells authorized by an area permit under subsection (b) of this title (relating to Standards), a new injection well may not commence injection until construction is complete, and**

(A) the permittee has submitted notice of completion of construction to the Director; and

(B) the executive director has inspected or otherwise reviewed the new injection well and finds it complies with the conditions of the permit; or

(C) the permittee has not received notice from the executive director of intent to inspect or otherwise review the new injection well within 13 days of the date of the notice in subparagraph (A) of this paragraph, in which case prior inspection or review is waived and the permittee may commence injection. The executive director shall include in the notice a reasonable time period in which he shall inspect the well.

(D) for Class I wells, submission of the completion report required by §331.65(a)(1) of this title (relating to Monitoring Requirements) shall constitute the notice required in subparagraph (A) of this paragraph.

(5) (No change.)

(6) Monitoring and reporting. **All permits shall specify requirements concerning the proper use, maintenance and installation, when appropriate, of monitoring equipment or methods including type, intervals, and frequency sufficient to yield data which are representative of the monitored activity including when appropriate, continuous monitoring. Reporting shall be no less frequent than specified in the appropriate sections of Chapter 331 of this title (relating to Underground Injection Control.** Section 331.64 and §331.65 of this title (relating to Monitoring Requirements; Reporting Requirements); §331.84 and §331.85 of this title (relating to Monitoring Requirements; Reporting Requirements); or **Chapter 331, Subchapter F** [§331.101-331.107] of this title (relating to Standards for Class III Well Production Area Development).

(7) **Closure** [Plugging]. The permittee shall notify the executive director and obtain approval before plugging an injection well. **After failing to operate for a period of two years, the owner or operator shall close the well in accordance with an approved plan unless**:

(A) notice is provided to the executive director; and,

(B) actions and procedures are described, satisfactory to the executive director, that the owner or operator will take to ensure that the well will not endanger underground sources of drinking water (USDWs) during the period of temporary abandonment. These actions and procedures shall include compliance with the technical requirements applicable, unless waived by the executive director.

[(8) Plugging and Abandonment Requirements. The permittee shall notify the executive director and obtain approval before plugging an injection well. Section 331.46 of this title (relating to Plugging and Abandonment Standards).]

(8)[(9)] Corrective action requirements. Section 331.44 of this title (relating to Corrective Action Standards) **and §305.152 of this title (relating to Corrective Action).**

(9) Financial assurance requirements. The permittee is required to demonstrate and maintain financial responsibility and resources to close, plug, and abandon the underground injection operation in a manner prescribed by the executive director. The permittee shall show evidence of such financial responsibility to the executive director by the submission of a surety bond, or other adequate assurance, such as a financial statement or other materials acceptable to the executive director.

(10) Post-closure requirements. Section 331.68 of this title (relating to Post-Closure Standards).

(11) Liability insurance requirements. The permittee of hazardous waste injection wells shall maintain sufficient public liability insurance for bodily injury and property damage to third parties that is caused by sudden and non-sudden accidents or will otherwise demonstrate financial responsibility in a manner adopted by the commission in lieu of public liability insurance. A liability insurance policy which satisfies the policy limits required by the hazardous waste management regulations of the commission for the applicant's proposed pre-injection facilities shall be deemed "sufficient" under this paragraph if the policy covers the injection well and is issued by a company that is authorized to do business and to write that kind of insurance in this state and is solvent and not currently under supervision or in conservatorship or receivership in this state or any other state.

(b) Area permits shall specify:

(1) The area within which underground injections are authorized, and

(2) The requirements for construction, monitoring, reporting, operation, and abandonment for all wells authorized by the permit.

(3) The area permit may authorize the permittee to construct and operate, convert, or plug and abandon wells within the permit area provided:

(A) The permittee notifies the executive director at such time as the permit requires;

(B) The additional well satisfies the criteria in §331.7(b) of this title (relating to Permit Required) and meets the requirements specified in the permit under paragraphs (1) and (2) of this subsection; and

(C) The cumulative effects of drilling and operation of additional injection wells are considered by the executive director during evaluation of the area permit application and are acceptable to the executive director.

(4) If the executive director determines that any well constructed pursuant to paragraph (3) of this subsection does not satisfy any of the requirements of this subsection, the executive director may amend, terminate, or take enforcement action. If the executive director determines that cumulative effects are unacceptable, the permit may be amended under §305.62 of this title (relating to Amendment).

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614349
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 239–6087

Chapter 307. Texas Surface Water Quality Standards

30 TAC §307.4, §307.10

The Texas Natural Resource Conservation Commission (TNRCC or commission) proposes an amendment to §307.4 and §307.10, concerning the Texas Surface Water Quality Standards.

No changes are proposed for the other sections of Chapter 307. The TNRCC water quality standards are established and reviewed on a periodic basis pursuant to the Texas Water Code, §26.023, as amended, and the Federal Water Pollution Control Act (Clean Water Act), §303(c), as amended. The

statewide surface water quality standards were last amended on July 13, 1995. The revisions proposed at this time are both substantive and editorial. As substantive changes, the commission proposes to change the presumed standard for unclassified perennial streams in East Texas from "intermediate aquatic life" to "high aquatic life" in §307.4(h)(1), and to designate site-specific standards for 37 additional streams in Appendix D of §307.10.

States adopt water quality standards for surface waters under §303 of the Federal Clean Water Act (33 USC §1313). The TNRCC has adopted site-specific standards for all classified streams and presumed standards for all unclassified streams for which the state has not yet completed site-specific studies. The TNRCC has also established a program to conduct receiving-water assessments, which are site specific studies consisting of fish sampling and habitat assessment, and in some cases invertebrate sampling, to determine the attainable aquatic-life uses and dissolved-oxygen criteria for unclassified streams. A receiving-water assessment is conducted when a permitting action is proposed that could affect an unclassified, perennial stream. Sampling is conducted over one or two days in an area of the stream that is relatively unimpacted. When a stream has been individually studied, site-specific standards (uses and criteria) may replace the presumed standards for that stream.

When the surface water quality standards were revised in 1995, the presumed standard for perennial streams in East Texas was changed from an aquatic-life use of "high" to an aquatic-life use of "intermediate." "High aquatic life" requires an instream dissolved oxygen concentration of five milligrams per liter, while "intermediate aquatic life" requires an instream dissolved concentration of four milligrams per liter.

The purpose of the lowered presumption was to avoid the time consuming process and administrative burden of adopting site-specific standards in cases where a site-specific study would indicate that the intermediate aquatic life standard was appropriate. However, on March 27, 1996, EPA Region 6 notified the TNRCC that the change in presumed standards for East Texas streams was disapproved. Under §§303(c)(3) and 303(c)(4) of the Clean Water Act (33 U.S.C. §§1313(c)(3) and 1313(c)(4)), EPA must promulgate a federal standard to replace the disapproved standard - unless the disapproval is resolved by subsequent state revision of the standards.

In a letter to EPA dated April 26, 1996, the TNRCC proposed a plan to resolve EPA disapproval of the standards. EPA approved the plan in a letter dated June 5, 1996. As part of the plan, the TNRCC is proposing to change the presumed standard for unclassified, perennial streams in East Texas back to "high aquatic life." Also as part of the plan, the TNRCC is proposing site-specific standards to be added to Appendix D of §307.10 for waterbodies for which receiving-water assessments have recently been completed.

Waterbodies listed in Appendix D of §307.10 are assigned an aquatic-life use and a criterion for dissolved-oxygen concentration. Geographic location of these waterbodies is indicated by the nearest downstream designated segment. Designated segments are major waterbodies which are defined in Appendices A and C of §307.10.

The following waterbodies are proposed for addition to Appendix D: Wagner Creek in Segment 0304, Cross Bayou in Segment 0400, Hart Creek in Segment 0404, Tankersley Creek in Segment 0404, County Relief Ditch in Segment 0501, Unnamed Tributary of Flat Fork Creek in Segment 0504, Wards Creek in Segment 0505, Cedar Creek in Segment 0604, Hurricane Creek in Segment 0604, One-Eye Creek in Segment 0604, Blackfork Creek in Segment 0606, Prairie Creek in Segment 0606, West Mud Creek in Segment 0611, Ragsdale Creek in Segment 0611, Keys Creek in Segment 0611, Mud Creek in Segment 0611, Blackhawk Creek in Segment 0611, Unnamed tributary of Coley Creek in Segment 0802, Keechi Creek in Segment 0804, Unnamed tributary (Northwest Branch) in Segment 0804, Toms Creek in Segment 0804, Duck Creek in Segment in Segment 0819, Cottonwood Creek in Segment 0820, Rowlett Creek in Segment 0820, Brookshire Creek in Segment 1202, Hog Branch in Segment 1202, Little Sandy Creek in Segment 1202, New Year Creek in Segment 1202, Carters Creek in Segment 1209, Cottonwood Creek in Segment 1242, Still Creek in Segment 1242, Unnamed tributary of Cottonwood Creek in Segment 1242, Brushy Creek in Segment 1244, Mustang Creek in Segment 1244, Red Gully in Segment 1245, Elm Creek in Segment 1426, and Martinez Creek in Segment 1902.

Editorial corrections are proposed for site-specific standards now listed in Appendix D for the following waterbodies: Rabbit Creek in Segment 0505, Eightmile Creek in Segment 0505, Black Fork Creek in Segment 0606, Little Sandy Creek in Segment 0610, Horsepen Creek in Segment 1014, Brickhouse Gully/Bayou in Segment 1017, Cole Creek in Segment 1017, Vogel Creek in Segment 1017, Linnville Bayou in Segment 1304, Barons Creek in Segment 1414, and Comanche Creek in Segment 1415.

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years these proposed sections are in effect there will be fiscal implications as a result of enforcement or administration of the sections.

The effect on state government will be an increase of approximately 34 additional permit amendments to be issued over the next five years. The additional permit amendments will be needed in order to allow time for site-specific revisions of the presumed "high aquatic-life use." This increase represents approximately 7 permit actions per year added to the roughly 600 permit actions per year which are conducted for wastewater permitting. This addition will not require additional staff.

The proposed change in the presumed standard for aquatic-life use, which also changes the presumed instream dissolved-oxygen criterion, can substantially affect permit limits for domestic wastewater discharges and a few large industrial discharges. The proposed revision of the presumed standard will increase administrative requirements for some municipal wastewater facilities in the Eastern portion of the state. In order to facilitate the development of a site-specific standard, permittees must typically obtain a standards variance when the permit is issued, and then return for a permit amendment after the site-specific standard has been adopted in the standards rule.

The costs to affected permittees are the administrative costs of preparing and coordinating an additional permit application and the costs of additional application fees. Administrative and co-

ordination costs are case-specific. Application fees for domestic wastewater discharges range from $350 for discharges less than 50,000 gallons per day to $2,015 for dischargers greater than 1,000,000 gallons per day. Approximately 34 additional permittees are projected to need a site-specific change to the standards rule if this proposal is adopted.

The proposed change in the presumed standard could have cost implications for small businesses. Additional costs of proposed revisions to water quality standards for small businesses served by affected domestic treatment facilities would depend on the rate policies of the individual domestic discharge permittees and their recovery of additional operational costs. The costs to small businesses of meeting these requirements compared to those of larger businesses will vary with site-specific circumstances rather than the size of the affected concern.

Adoption of the proposed revision of the presumed standard will preclude federal promulgation of the Texas standards, since EPA has already disapproved the presumed standard for East Texas streams which is now in the standards rule. Federal promulgation would hinder delegation of the NPDES federal permitting program to Texas. The state would have less control over EPA implementation of an EPA-promulgated standard.

The proposed addition of site-specific standards for 37 streams in Appendix D is expected to reduce potential costs to municipal wastewater permittees. If the proposed site-specific changes are adopted now, then approximately 22 permittees will avoid additional administrative requirements and the need for an additional permit amendment.

Mr. Minick has also determined that for the first five years these proposed sections are in effect the public benefit anticipated as a result of enforcement of and compliance with the sections will be improvements in the regulation of permitted wastewater discharges and the quality of the surface water resources of the state, increased protection of public drinking water supplies and aquatic life resources, and improved compliance with the provisions of the Texas Water Code and the regulations of the Texas Natural Resource Conservation Commission. The anticipated economic costs to individuals required to comply with these sections as proposed will be similar to those for small businesses. Those persons served by municipal discharge facilities may indirectly face increased service rates from local governments or operators of domestic treatment facilities which must recover increased costs of compliance from their customers.

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that Assessment. The specific purpose of the revision is to change the presumed standard for unclassified perennial streams in East Texas from "intermediate aquatic life" to "high aquatic life." The proposed revision will increase administrative requirements and costs for affected permittees. The action is taken to fulfill an obligation mandated by federal law. EPA has disapproved the current presumed standards for East Texas streams. The revisions are being proposed in order to avoid promulgation of a federal standard.

Public hearings on the proposal will be held in Tyler on November 20, 1996 at 7:00 p.m., in the City Council Chambers, Second Floor of the City Hall, 210 North Bonner, Tyler; and in Austin on November 18, 1996 at 10:00 a.m. at the Texas Natural Resource Conservation Commission Office Complex, Room 201S, Building E, 12015 North Interstate 35, Austin. The hearings are structured to receive oral or written comments by interested persons. Individuals may present oral statements when called upon in the order of registration. There will be no open discussion by the audience during the hearings; however, a commission staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after each hearing.

Written comments on the proposal should refer to Rule Log Number 96138-307-WT and may be submitted to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC 205, P. O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640. Comments may be faxed to (512) 239-5687, but must be followed up with the submission the written comments. Written comments must be received by 5:00 p.m. on December 2, 1996. For further information concerning this proposal, please contact Charles Bayer MC-150, Water Planning and Assessment Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711, (512) 239-4583.

These sections are proposed under the authority of the Texas Water Code, §§5.103, 5.105, and 5.120, which provide TNRCC with authority to promulgate rules as necessary to protect the quality of the state's waters.

These sections are also proposed pursuant to the Texas Water Code, §26.023, which provides the TNRCC with the authority to make rules setting water quality standards for all water in the state.

There are no other rules, codes or statutes that will be affected by this proposal.

§307.4. General Criteria.

(a)-(g) (No Change.)

(h) Dissolved oxygen and aquatic life uses.

(1) Dissolved oxygen criteria for unclassified waters with aquatic life uses will be sufficient to support appropriate aquatic life use categories, in accordance with §307.7 of this title (relating to Site-specific Uses and Criteria). [Except for perennial pools in intermittent streams and perennial streams and rivers in the northeast and southeast portion of the state defined as an area east of a line demarcated by Interstate Highway 35 and 35W from the Red River southward to the Williamson County and Travis County line and then northward and eastward of the Colorado River Basin divide to the Texas coast, those] Perennial streams, rivers, lakes, bays, estuaries, and other appropriate perennial waters which are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have a high aquatic life use and corresponding dissolved oxygen criteria. [Those perennial streams and rivers located in the northeast and southeast portion of the state (as defined in §307.7(b)(3)(A)(ii)) which are not specifically listed in Appendix A or D of §307.10 of this title are presumed to have an intermediate aquatic life use and corresponding dissolved oxygen criteria.] In accordance with results from statewide ecoregion studies, unclassified perennial streams in southeast and northeast Texas are assigned dissolved oxygen criteria

as indicated in §307.7(b)(3)(A)(ii) of this title. Higher uses will be maintained where they are attainable.

(2) (No change.)

(i)-(k) (No change.)

§307.10. Appendices A - E.

The following appendices are integral components of this chapter of the Texas Surface Water Quality Standards:

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

(4) Appendix D - Site-specific Receiving Water Assessments.

Figure 1: 30 TAC §307.10(4))

(5) (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.

Issued in Austin, Texas, on September 18, 1996.

TRD-9614186
Kevin McCalla
Director, Legal Division
Texas Natural Resource Conservation Commission
Proposed date of adoption: December 2, 1996
For further information, please call: (512) 239–4640

TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part X. Texas Water Development Board

Chapter 363. Financial Assistance Programs

The Texas Water Development Board (the board) proposes amendments to Chapter 363, Subchapter A, §363.42 concerning Loan Closing and Subchapter G, §363.721 concerning Loan Closing. Amendments to §363.42 and §363.721 will add the requirement and instructions for closing all loans in Book- Entry-Only form through the Depository Trust Company. The Book Entry payment method allows principal and interest payments to be tracked via data base eliminating the need for handling and depositing checks and the safekeeping of a physical bond, and providing same day receipt of payments made to the board by political subdivisions whose bonds the board holds.

Pamela Ansboury, the Director of Finance, has determined that for the first five year period the sections are in effect there will be fiscal implications for state and local government as a result of enforcing or administering the sections. The estimated reduction in cost and increase in interest earnings from the rule to state government will be $45,364 in 1997, $74,364 in 1998, $111,000 in 1999, $111,000 in 2000 and $111,000 in 2001. The additional cost to each local government closing loans with the board is estimated to be $200-$350 for each of the first five years the rule is in effect.

Ms. Ansboury also has determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing the sections will be increased efficiency in the handling, tracking and payment of the loans in the Board's loan portfolio. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Veronica Hinojosa, Cash and Securities Manager, (512) 463-7871, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

Subchapter A. General Provisions

Prerequisites to Release of State Funds

31 TAC §363.42

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

Chapter 15, Subchapters C & J and Chapter 17, Subchapters E & I of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§363.42. Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1)-(6) (No changes.)

[(7) debt delivered in proper form to a location specified by the executive administrator;]

(7)[(8)] other or additional data and information, if deemed necessary by the executive administrator.

(b) (No changes.)

(c) Closing Requirements. A political subdivision shall be required to comply with the following closing requirements:

(1) all loans shall be closed in book-entry-only form;

(2) the political subdivision shall use a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(3) the political subdivision shall be responsible for paying all DTC closing fees assessed to the political subdivision by the Board's custodian bank directly to the Board's custodian bank;

(4) the political subdivision shall provide evidence to the Board that one fully registered bond has been sent to the DTC or to the political subdivision's paying agent/registrar prior to closing.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614388
Craig D. Pedersen
Executive Administrator
Texas Water Development Board
Proposed date of adoption: November 20, 1996

For further information, please call: (512) 463–7981

Subchapter E. Economically Distressed Areas Program

31 TAC §363.505

The Texas Water Development Board (the board) proposes amendment to §363.505 concerning Calculation of Financial Assistance. New subsection (d) will allow the Board to provide funds as 100% grants to political subdivisions approved for construction funding through the Economically Distressed Areas Program under the Community Self-Help Program, which provides assistance to small communities using self-help initiatives coordinated through a contract between the board, the Rensselaerville Institute and WaterWorks.

Pamela Ansboury, the Director of Finance, has determined that for the first five year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Ansboury also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be to provide an integration of the Board's Economically Distressed Areas funding with self-help initiatives. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Suewan Johnson, Attorney, (512) 463-8249, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §16.342 which provide the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the Economically Distressed Areas Program.

Chapter 17, §§17.930, 17.932 and 17.933 of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§363.505. Calculation of Financial Assistance.

(a)-(c) (No changes.)

(c) If the amount of financial assistance for which repayment is not required exceeds 50% of the total amount of financial assistance requested from the Economically Distressed Areas Program, including funds for system capacity, plus the total interest on any amount of financial assistance that must be repaid, the applicant will be asked to provide a finding from the commission that a nuisance dangerous to the public health and safety exists resulting from water supply and sanitation problems in the area to be served by the proposed project.

(d) In lieu of using the calculations or considerations provided in subsections (a) and (b) of this section to determine the amount and form of financial assistance, the Board will provide financial assistance in the form of grants to political subdivisions approved by the Board for construction funding through the Community Self-Help Program, which provides assistance to small communities using self-help initiatives coordinated through a contract between the board, the Rensselaerville Institute and WaterWorks.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614391
Craig D. Pedersen
Executive Administrator
Texas Water Development Board
Proposed date of adoption: November 20, 1996
For further information, please call: (512) 463–7981

Subchapter G. Small Community Emergency Loan Program

31 TAC §363.721

The amendments are proposed under the authority of the Texas Water Code, §6.101 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State.

Chapter 15, Subchapters C & J and Chapter 17, Subchapters E & I of the Texas Water Code are the statutory provisions affected by the proposed amendments.

§363.721. Loan Closing.

(a) Loan documents shall be executed at the time of closing and shall include the following:

(1)-(12) (No changes.)

(b) Closing Requirements. A political subdivision shall be required to comply with the following closing requirements:

(1) all loans shall be closed in book-entry-only form;

(2) the political subdivision shall use a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(3) the political subdivision shall be responsible for paying all DTC closing fees assessed to the political subdivision by the Board's custodian bank directly to the Board's custodian bank;

(4) the political subdivision shall provide evidence to the Board that one fully registered bond has been sent to the DTC or to the political subdivision's paying agent/registrar prior to closing.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614389
Craig D. Pedersen
Executive Administrator

Texas Water Development Board
Proposed date of adoption: November 20, 1996
For further information, please call: (512) 463–7981

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Chapter 375. State Water Pollution Control Revolving Fund

Prerequisites to Release of Funds

31 TAC §375.72

The Texas Water Development Board (the board) proposes an amendment to §375.72 concerning Loan Closing. The amendment to §375.72 will add the requirement and instructions for closing all loans in Book- Entry-Only form through the Depository Trust Company. The Book Entry payment method allows principal and interest payments to be tracked via data base eliminating the need for handling and depositing checks and the safekeeping of a physical bond, and providing same day receipt of payments made to the board by political subdivisions whose bonds the board holds.

Pamela Ansboury, the Director of Finance, has determined that for the first five year period the section is in effect there will be fiscal implications for state and local government as a result of enforcing or administering the section. The estimated reduction in cost and increase in interest earnings from the rule to state government will be $45,364 in 1997, $74,364 in 1998, $111,000 in 1999, $111,000 in 2000 and $111,000 in 2001. The additional cost to each local government closing loans with the board is estimated to be $200-$350 for each of the first five years the rule is in effect.

Ms. Ansboury also has determined that for each year of the first five years that the section is in effect the public benefit anticipated as a result of enforcing the section will be increased efficiency in the handling, tracking and payment of the loans in the Board's loan portfolio. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment will be accepted for 30 days following publication and may be submitted to Veronica Hinojosa, Cash and Securities Manager, (512) 463-7871, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231.

The amendment is proposed under the authority of the Texas Water Code, §6.101 and §15.605 which provides the Texas Water Development Board with the authority to adopt rules necessary to carry out the powers and duties in the Water Code and other laws of the State including specifically the SRF program.

Chapter 15, Subchapter J of the Texas Water Code are the statutory provisions affected by the proposed amendment.

§375.72. Loan Closing.

(a) Instruments needed for closing. The documents which shall be required at the time of closing shall include the following:

(1)-(6) (No changes.)

[(7) debt delivered in proper form to a location specified by the executive administrator;]

(7)[(8)] evidence that the applicant shall maintain adequate insurance coverage on the project in an amount adequate to protect the board's interest;

(8)[(9)] assurances that the applicant will comply with any special conditions specified by the board's environmental determination until all financial obligations to the state have been discharged;

(9)[(10)] other or additional data and information, if deemed necessary by the executive administrator.

(b)-(e) (No changes.)

(f) Closing Requirements. A political subdivision shall be required to comply with the following closing requirements:

(1) all loans shall be closed in book-entry-only form;

(2) the political subdivision shall use a paying agent/registrar that is a Depository Trust Company (DTC) participant;

(3) the political subdivision shall be responsible for paying all DTC closing fees assessed to the political subdivision by the Board's custodian bank directly to the Board's custodian bank;

(4) the political subdivision shall provide evidence to the Board that one fully registered bond has been sent to the DTC or to the political subdivision's paying agent/registrar prior to closing.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614390
Craig D. Pedersen
Executive Administrator
Texas Water Development Board
Proposed date of adoption: November 20, 1996
For further information, please call: (512) 463–7981

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TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 3. Tax Administration

Subchapter F. Motor Vehicle Sales Tax

34 TAC §§3.75, 3.77, 3.83

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

The Comptroller of Public Accounts proposes the repeal of §§3.75, 3.77 and 3.83, concerning voided receipt because of bad check, refunds and payments under protest, and payment instruments. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit

taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.75, concerning refunds, payments under protest, payment instruments and dishonored payments, consolidates the substance of the current §§3.75, 3.77, and 3.83.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of these rules. The repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are 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 repeals implement Tax Code, §111.002.

§3.75. Voided Receipt Because of Bad Check.
§3.77. Refunds and Payment Under Protest.
§3.83. Payment Instruments.

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.

Issued in Austin, Texas, on September 25, 1996.

TRD-9614099
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: November 1, 1996
For further information, please call: (512) 463–4062

34 TAC §3.75

The Comptroller of Public Accounts proposes new §3.75, concerning motor vehicle tax refunds, payments under protest, payment instruments and credit for the County Tax Assessor- Collector of dishonored payments. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit the taxpayers by providing a more effective means of obtaining information. Therefore, current §3.75 is being proposed for repeal. The new section consolidates the substance of the current §3.75, concerning dishonored payments, §3.77, concerning refunds and payments under protest, and §3.83, concerning payment instruments. Due to legislative changes, definitions of dealer and seller-financed sales are added to subsection (a) of this section and the handling of these refunds is added to subsection (b) of this section.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. 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.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section 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 new section implements the Tax Code, §§111.004, 111.1042, 111.105, 111.107, 111.108, 111.110, 111.207, 112.051, and 112.052.

§3.75. Refunds, Payments Under Protest, Payment Instruments and Dishonored Payments.

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

(1) Dealer-A motor vehicle seller licensed by the Texas Department of Transportation in accordance with the Article 6686, Revised Statutes, or the Transportation Code, to sell motor vehicles.

(2) Seller-Financed Sales-A retail sale of a motor vehicle by a dealer in which the seller collects all or part of the total consideration in periodic payments and retains a lien on the motor vehicle until all payments have been received.

(b) Refunds.

(1) Tax paid to state. Any person, his attorney, assignee, executor, or administrator may request from the comptroller a refund of any tax that he has remitted to the state but that was not due.

(A) The refund request must be made within:

(i) four years from the date on which the tax was due and payable; or

(ii) six months after a determination for the periods for which refund is claimed becomes final; or

(iii) six months after any determination would have become final had payment not been made before the due date.

(iv) a claim for refund of an amount paid pursuant to a deficiency determination is timely for all transactions included in the deficiency determination if made in accordance with clauses (ii) or (iii) of this subparagraph. A claim for refund for items not included in a deficiency determination must be made in accordance with clause (i) of this subparagraph.

(B) Before the expiration of the statute of limitations, the comptroller and a taxpayer may agree in writing to an extension of the statute of limitations.

(C) An extension applies only to the periods specifically mentioned in the agreement. Any assessment or refund request pertaining to periods for which limitations have been extended must

be made prior to the expiration date of the agreement. Following expiration of the agreement, the statute of limitations applies to subsequent assessments and refund requests as if no extension had been authorized.

(D) The request for refund must be made in writing and must state the specific grounds upon which the claim is founded. The request must also indicate the period for which the claimed overpayment was made.

(E) In determining the statute of limitations for filing a refund claim, the time during which an administrative proceeding is pending before the comptroller for the same period is not counted. A taxpayer may not file a claim for the same transaction and for the same time period as a refund claim previously denied.

(F) Failure to file a claim within the limitation prescribed by this section constitutes a waiver of any demand against the state on account of the overpayment.

(2) Tax paid to county tax assessor-collector. Tax paid to the county tax assessor-collector should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The written refund request should include a copy of the receipt issued by the county tax assessor- collector for payment of taxes and the taxpayer's social security number or federal employers identification number.

(3) Tax paid to a dealer on sales other than seller-financed sales. Tax paid to dealer should be recovered in the same manner as prescribed in paragraph (1) of this subsection. The written refund request should include a copy of the receipt issued by the county tax assessor-collector for payment of taxes and the taxpayer's social security number or federal employers identification number.

(4) Tax paid to a dealer on seller-finance sales. A person who remits tax to a dealer may not request from the comptroller a refund of any tax that the person has remitted to a seller but contends was not due. The tax must be recovered from the seller.

(A) A written request for a refund must be directed to the dealer and must state the specific grounds upon which the claim is founded. The written request should be retained by the dealer to document the reason tax was refunded.

(B) After the dealer has refunded or, with the purchaser's written consent, credited the tax to the account of the purchaser, the dealer may then seek reimbursement from the state in accordance with the procedures outlined in paragraph (1) of this subsection, or take a credit on the dealer's next return in the amount refunded or credited to the account of the purchaser.

(c) Payments under protest.

(1) Payment made to a county tax assessor-collector.

(A) If, pursuant to the authority of the Tax Code, §112.051, motor vehicle sales and use taxes are paid under protest to a county tax assessor-collector, the protest payment to the tax assessor- collector must be accompanied by a written letter of protest that sets out in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized. Immediately upon receipt of the protest payment and written protest, a copy of the protest letter must be sent to the comptroller by the tax assessor-collector together with a copy of the tax receipt showing that tax was paid. If the taxpayer fails to submit to the county tax assessor- collector the letter of protest at the time of payment, the tax should be remitted normally by the tax assessor- collector.

(B) The payment of taxes under protest to a county tax assessor-collector is limited to those taxes that the tax assessor-collector is authorized to receive.

(C) It is the duty of the county tax assessor-collector to transmit the full amount of all motor vehicle sales and use taxes paid under protest to the state treasurer. The tax assessor-collector shall transmit these protest payments to the state treasurer daily and the tax assessor-collector must inform the treasurer in writing that such taxes were paid under protest.

(2) Payment made to the comptroller. A written letter of protest that sets out fully and in detail each and every ground or reason why the taxpayer contends that the assessment is unlawful or unauthorized must accompany the payment. If the payment and letter of protest do not accompany one another, the payment will be deemed not to have been made under protest.

(d) Payment Instruments.

(1) The Comptroller of Public Accounts authorizes money orders, cash, cashier's checks, and certified checks as valid methods of payment of motor vehicle sales and use taxes to a county assessor and collector of taxes. If a county tax assessor-collector accepts personal checks as payment instruments, he is relieved of liability only if he requires at least the following identification:

(A) personal data including name, home address, home telephone number, name and location of employer, and telephone number of employer;

(B) driver's license number of the person signing the check; and

(C) license plate number of motor vehicle(s) owned by person signing the check.

(2) if a county tax assessor-collector accepts a personal check in payment of motor vehicle sales and use taxes, and the personal check is not honored, the county tax assessor-collector may request the assistance of the comptroller in collecting the monies due if he certifies on a form promulgated by the comptroller:

(A) the identification information required by this rule;

(B) two dates upon which the county tax assessor-collector sent the check to the appropriate bank;

(C) the date upon which the sheriff attempted to seize the license plates if the fees for the plates were included in the check; and

(D) the date(s) the county tax assessor-collector took other collection action, such as filing a complaint with the county attorney or hiring a collection agency.

(e) Voided Receipt Because of Dishonored Payment. A county tax assessor-collector has no authority to void a motor vehicle sales tax receipt and not report the tax payment when the check given in payment of the tax is returned unpaid (See Attorney General Opinion O-4745 (1942)).

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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Chief, General Law
Comptroller of Public Accounts
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For further information, please call: (512) 463–4062

Subchapter K. Hotel Occupancy Tax

34 TAC §§3.161, 3.163, 3.164

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

The Comptroller of Public Accounts proposes the repeal of §3.161, §3.163, and §3.164, concerning definitions, exemptions, and exemption certificate. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The new §3.161, concerning definitions, exemptions, and exemption certificate, includes the substance of the current §3.161, §3.163, §3.164, and a definition for hotel. The definition for hotel in the current §3.162, concerning collection of tax, is being deleted.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing the repeals.

Mr. Reissig also has determined that for the first five years the repeals are in effect there will be no cost or benefit to the public from the repeal of these rules. These repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are 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 repeals implement the Tax Code, §111.002.

§3.161. Definitions.
§3.163. Exemptions.
§3.164. Exemption Certificate.

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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Martin Cherry
Chief, General Law
Comptroller of Public Accounts
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34 TAC §3.161

The Comptroller of Public Accounts proposes new §3.161, concerning definitions, exemptions, and exemption certificate. The comptroller has determined that the consolidation of sections dealing with similar matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.161 is being proposed for repeal. The new section consolidates the substance of the current §3.161, with the substance of §3.163, concerning exemptions and §3.164, concerning exemption certificate. The new section includes a definition for hotel. The definition for hotel in the current §3.162, concerning collection of tax, is being deleted.

House Bill 2129, 74th Legislature, 1995, eliminated the exemption for federal employees traveling on official business. The 53rd District Court, Travis County, ruled that imposing the hotel tax on federal employees traveling on official business violates the Texas Constitution and United States Constitution. Subsection (b)(4) reinstates the hotel occupancy tax exemption for federal employees traveling on official business.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. 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 persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section 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 new section implements the Tax Code, §§156.102, 156.103, 351.006, and 352.007.

§3.161. Definitions, Exemptions, and Exemption Certificate.

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

(1) Charitable or eleemosynary organization-A nonprofit organization devoting all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling

directly to indigent or similarly desiring members of society with its funds derived primarily, from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chamber of commerce, and similar organizations. Even though not organized for profit and performing services which are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision.

(2) Educational organizationA nonprofit organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Entities that are defined in the Education Code, §61.003, as "institutions of higher education" are recognized for exemption under this provision. Included in the definition of "institutions of higher education" are state and private universities and colleges.

(3) Religious organizationA nonprofit organization that is an organized group of people regularly meeting for the primary purpose of holding, conducting and sponsoring religious worship services, according to the rights of their sect. The organization must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An organization that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations and groups who meet for the purpose of holding prayer meetings, bible study or revivals.

(4) HotelAny building or buildings in which members of the public obtain sleeping accommodations for a consideration. The term includes, in addition to the buildings listed in the Tax Code, §156.001, manufactured homes, skid mounted bunk houses, residency inns, condominiums, cabins, and cottages.

(b) Exemptions. This section deals with exemptions from the state hotel occupancy tax. For information on city and county hotel taxes, contact the affected city or county.

(1) The YMCA, YWCA, and private clubs are exempt from the collection of tax for room rental to members.

(2) Religious, charitable, and educational organizations and their employees, including college and university personnel, traveling on official business of the organization are exempt from payment of hotel occupancy tax.

(3) State officials, judicial officers, heads of state agencies, the Executive Director of the Legislative Council, the Secretary of the Senate, state legislators, legislative employees, members of state boards and commissions, and designated state employees of the State of Texas who present a Hotel Tax Exemption Photo Identification Card when traveling on official state business are exempt from the hotel occupancy tax. State agency, institution, board, or commission employees who have not been issued a Hotel Tax Exemption Photo Identification Card must pay the hotel occupancy tax. The hotel tax paid by the state or reimbursed to a state employee may be refunded as provided in §3.163 of this title (relating to Refund of Hotel Occupancy Tax). For the purpose of claiming an exemption, a Hotel Tax Exemption Photo Identification Card includes:

(A) any photo identification card issued by a state agency that states "EXEMPT FROM HOTEL OCCUPANCY TAX, under Tax Code §156.103(d)", or similar wording; or

(B) a Hotel Tax Exemption Card that states "when presented with a photo identification card issued by a Texas agency, the holder of this card is exempt from state, municipal, and county hotel occupancy tax, Tax Code, §156.103(d)", or similar wording.

(4) The United States Government and its employees traveling on official business representing the United States government are exempt from the hotel occupancy tax.

(5) Diplomatic personnel of a foreign government who present an appropriate Tax Exemption Card issued by the United States Department of State are exempt from the tax.

(6) Where an exemption applies, the organization or individual claiming it must present an exemption certificate to the hotel.

(c) Exemption certificate.

(1) Any organization or individual claiming exemption from the payment of hotel occupancy tax must furnish the hotel with a signed exemption certificate.

(2) A hotel claiming exemption of its receipts from hotel occupancy tax must provide proof that the receipts were exempt, either through exemption certificates or other competent evidence.

(3) Exemption numbers or tax numbers do not exist for purposes of the hotel occupancy tax.

(4) The exemption certificate must be substantially in the form herein adopted by reference. Copies of the certificate are available for inspection at the office of the Texas Register or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number 1-800-252- 1385. In Austin, call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin the local TDD number is 463-4621.)

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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34 TAC §3.163

The Comptroller of Public Accounts proposes new §3.163, concerning refund of hotel occupancy tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.166, concerning refund of hotel occupancy tax, is being proposed for repeal. The new section contains the substance of the current §3.166 without the requirement that federal employees traveling on official business pay the hotel occupancy tax. This change is the result of the 53rd District Court decision stating that the requirement was unconstitutional. In addition, the Texas Claim for Refund of Hotel Occupancy Tax form is adopted by reference.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. The 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 persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section 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 new section implements the Tax Code, §§156.103, 156.154, 351.006, and 352.007.

§3.163. Refund of Hotel Occupancy Tax.

(a) State agency. A state agency is an agency, institution, board, or commission of the State of Texas other than an institution of higher education as defined in Education Code, §61.003.

(b) Refunds. A state agency may request a refund for each calendar quarter for the state, municipal, and county hotel tax paid directly to a hotel or the amount of state, municipal, and county hotel tax reimbursed to a state employee on a state travel voucher.

(c) Time limitation. A state agency may apply for a refund of state hotel tax no later than two years after the end of the fiscal year in which the travel occurred as provided by State of Texas Travel Allowance Guide, §1.17 and §8.06. A state agency may apply for a refund of municipal or county hotel occupancy tax for each calendar quarter according to the local city or county ordinance. In the absence of a local ordinance, the same time limitation that applies to the refund of state hotel tax will apply to municipal and county taxes.

(d) Documentation required.

(1) Documentation must be maintained to substantiate the claim, including a copy of the hotel folio, billing statement, invoice, or other document, that contains the following information:

(A) name of the hotel,

(B) location address of hotel,

(C) name of city where hotel is located,

(D) name of county where hotel is located,

(E) date(s) of lodging,

(F) amount of state, municipal, and county hotel tax paid separately stated,

(G) method of payment (travel voucher reimbursement, state credit card, state purchase order, direct billing, other), and

(H) name of employee, if tax reimbursed on travel voucher.

(2) A municipality or county may, by local ordinance, require additional documentation or require documentation be submitted with a claim for refund of local tax.

(e) Separate refund claim required. A separate refund claim form must be filed with each municipality or county.

(f) Form. Each claim for refund for state hotel occupancy tax must be filed on a form furnished by the comptroller. The municipal and county hotel occupancy tax refund claim form, herein adopted by reference, must be substantially in the form set out as follows. Copies of the certificate are available for inspection at the office of the **Texas Register** or may be obtained from the Comptroller of Public Accounts, P.O. Box 13528, Austin, Texas 78711. Copies may also be requested by calling our toll-free number 1-800-252- 1385. In Austin, call 463-4600. From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin the local TDD number is 463-4621

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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34 TAC §3.166

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

The Comptroller of Public Accounts proposes the repeal of §3.166, concerning refund of hotel occupancy tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The section is being repealed in order to simplify the consolidation of related sections into a single section. The new §3.163 includes the substance of the current section 3.166.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeal is in effect there will be no fiscal implications to state or to units of local government as a result of enforcing the repeal.

Mr. Reissig also has determined that for the first five years the repeal is in effect there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeal 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 repeal implements the Tax Code, §111.002.

§3.166. Refund of Hotel Occupancy Tax.

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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Comptroller of Public Accounts
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Subchapter O. State Sales and Use Tax

34 TAC §3.296

The Comptroller of Public Accounts proposes an amendment to §3.296, concerning agriculture, animal life, feed, seed, plants, and fertilizer. Subsection (a)(2)(A) is clarified to include examples of feed for wildlife, including perishable bait purchased for commercial, sport and recreational fishing. Also, the comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The amendment adds the substance of subsections (b) and (c) of the current §3.320, concerning ice and dry ice, as subsections (j) and (k) in this section. The current §3.320 is being repealed.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. 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.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The 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 Tax Code, §151.316 and §151.342.

§3.296. Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer.

(a) Sales tax is not due on the receipts from sales of, and the storage, use or consumption of, the following:

(1) (No changes.)

(2) Hay, corn, oats, and any other type of feed normally consumed by farm and ranch animals, animals that are held for sale in the regular course of business, and wildlife.

(A) Included in this section is feed for animals covered by paragraph (1) of this subsection, feed for animals held for breeding purposes whose offspring are held for sale in the regular course of business, and wildlife. **Examples of feed purchased for wildlife include deer corn and perishable bait used for commercial, sport and recreational fishing.** Feed purchased for an animal that might normally be kept as a pet is taxable. Pets normally include, but are not limited to, dogs, cats, rabbits, hamsters, and tropical fish.

(B) (No changes.)

(3)-(6) (No changes.)

(b)-(i) (No changes.)

(j) Ice used on agricultural products.

(1)Sales or use tax is not due on ice used to remove field heat from agricultural products.

(2) Sales or use tax is not due on bunker ice, top ice, or any ice placed on transportation facilities by growers. For example, ice used inside or outside crates of lettuce to cool the lettuce while being shipped is exempt.

(3) Sales or use tax is due on the subsequent icing after the initial icing for the purpose of preservation prior to sale except by the original grower.

(k) Sales or use tax is not due on ice exclusively used by commercial fishing boats in the storing of aquatic species, such as shrimp and other crustaceans, finfish, mollusks, and other similar creatures.

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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Chief, General Law
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Subchapter S. Interstate Motor Carrier Sales and Use Tax

34 TAC §§3.443–3.448

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

The Comptroller of Public Accounts proposes the repeal of §§3.443-3.448, concerning the imposition of tax after the effective date; computation of the proportioned tax - interstate motor vehicles; computation of the proportioned tax - trailers and semitrailers; lease price, sales price, and purchase price; owner-operator contracts; and trip- lease agreements. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §§3.443-3.448 will be included in the new §3.443, concerning computation of interstate motor vehicle sales and use tax.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications to state or to units of local government as a result of enforcing the repeals.

Mr. Reissig also has determined that for the first five years the repeals are in effect there will be no cost or benefit to the public from the repeal of these rules. These repeals are adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeals as proposed.

Comments on the repeals may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The repeals are 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 repeals implement the Tax Code, §111.002.

§3.443. Imposition of Tax after Effective Date.
§3.444. Computation of the Proportioned Tax - Interstate Motor Vehicles.
§3.445. Computation of the Proportioned Tax - Trailers and Semitrailers.
§3.446. Lease Price, Sales Price, and Purchase Price.
§3.447. Owner-Operator Contracts.
§3.448. Trip-Lease Agreements.

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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34 TAC §3.443

The Comptroller of Public Accounts proposes new §3.443, concerning computation of interstate motor vehicle sales and use tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.443 is being proposed for repeal. The new section consolidates the substance of the current §3.443 with §3.444, concerning computation of the proportioned tax - interstate motor vehicles, §3.445, concerning computation of the proportioned tax - trailers and semitrailers, §3.446, concerning lease price, sales price, and purchase price, §3.447, concerning owner-operator contracts, and §3,448, concerning trip-lease agreements.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. 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.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section 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 new section implements the Tax Code, §§157.001, 157.101, and 157.102.

§3.443. Computation of Interstate Motor Vehicle Sales and Use Tax.

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

(1) Controlling interest - 50% or more of ownership.

(2) Interstate commercial motor vehicle - A motor vehicle other than a motorcycle or passenger car which:

(A) is designed or used primarily for the transportation of persons or property;

(B) operates in two or more states or provinces; and

(C) has fuel supply tanks of 60 gallons or more; or

(D) any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an "interstate motor vehicle."

(3) Interstate motor vehicle.

(A) A motor vehicle which:

(i) could be registered on an apportioned basis if it were registered in a state or province that is a member of the International Registration Plan;

(ii) is operated in two or more states or provinces; and

(iii) either:

(I) has a gross vehicle weight in excess of 26,000 pounds;

(II) has three or more axles; or

(III) is used in combination with a trailer or semitrailer, when the gross weight of the combination exceeds 26,000 pounds.

(B) Charter buses are interstate motor vehicles if they meet the requirements specified in paragraph (2)(A)(i) and (ii) of this subsection.

(C) Any motor vehicle which is operated in two or more states and which has actually been registered on an apportioned basis under the International Registration Plan is also considered to be an interstate motor vehicle.

(4) Interstate truck-tractor - A truck-tractor which is operated in two or more states or provinces.

(5) Lease - An agreement by an owner of a motor vehicle, trailer, or semitrailer to give to another for longer than 180 days under a single agreement exclusive use of the vehicle without a driver for consideration.

(6) Owner-operator - A motor carrier who leases, rents, or otherwise provides a motor vehicle for the use of others and who, in the regular course of business, also provides, procures, or arranges for, directly, indirectly, or by course of dealing, a driver or operator for the vehicle.

(7) Preceding year - The period of 12 consecutive calendar months immediately prior to January 1 or to any calendar quarter that is consistently used.

(8) Purchase - A lease of, or a transfer of title to, a motor vehicle, trailer, or semitrailer for consideration.

(9) Semitrailer - A vehicle of the trailer type so designed or used in conjunction with a motor vehicle that some part of its own weight and that of its load rests upon or is carried by another vehicle. For the purposes of the Tax Code, §157.001(7), effective September 1, 1991, "semitrailer" includes dollies, jeeps, stingers, auxiliary axles, and converter gears.

(10) Total miles - The mileage of all interstate truck-tractors and interstate commercial motor vehicles which were operated in Texas and which were:

(A) owned by the motor carrier;

(B) leased to the carrier without a driver and for a time period exceeding 180 days;

(C) leased to the carrier by an owner-operator; or

(D) leased by the carrier to another pursuant to a trip-lease agreement.

(11) Trailer - A vehicle designed or used to carry its load wholly on its own structure and to be drawn by a motor vehicle.

(12) Trip-lease agreement - A lease of a vehicle with a driver on a single-trip basis.

(13) Truck-tractor - A motor vehicle which is designed or used primarily for drawing other vehicles and which is constructed so as to be able to carry a part of the weight of the vehicle and the load being drawn.

(14) Truck-tractor ratio - The percentage of a motor carrier's truck-tractors operated in Texas during a reporting period (i.e., total number of truck-tractors operated in Texas during the reporting period divided by the total number of truck-tractors operated everywhere during the same reporting period).

(b) Computation of the proportioned tax - interstate motor vehicles.

(1) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(2) Multiply the purchase price of each interstate motor vehicle purchased in Texas or first brought into Texas during the reporting period by the current tax rate, and that result by the percentage calculated in paragraph (1) of this subsection. A vehicle "first brought into Texas" includes those entering Texas for the first time ever, and those entering Texas for the first time:

(A) after a change in ownership or lease contract, or

(B) while they are operated by a different motor carrier.

(c) Computation of the proportioned tax - trailers and semi-trailers.

(1) Computation of the proportioned tax - Method 1.

(A) Divide the carrier's total miles operated in Texas during the preceding year by the carrier's total miles operated everywhere during the preceding year.

(B) Multiply the purchase price of all trailers and semitrailers purchased during the reporting period by the current tax rate, and that result by the percentage calculated in subparagraph (A) of this paragraph.

(C) Multiply the amount calculated in subparagraph (B) of this paragraph by the truck- tractor ratio.

(2) Computation of the proportioned tax - Method 2.

(A) If a motor carrier can prove that the tax liability for the number of trailers and semitrailers which were actually purchased in Texas or first brought into Texas during the reporting period is less than the amount computed using the method described in paragraph (1) of this subsection, the motor carrier may use the following method:

(i) divide the carrier's total miles operated in Texas during the preceding year by the carrier's miles operated everywhere during the preceding year.

(ii) multiply the purchase price of each trailer and semitrailer that was purchased in Texas or first brought into Texas during the reporting period by the current tax rate, and that result by the percentage calculated in clause (i) of this subparagraph.

(B) If the motor carrier elects to use this method, it will be held responsible for maintaining records which are separate from its records for interstate motor vehicles and interstate commercial motor vehicles and which detail the movements of all trailers and semitrailers purchased during the reporting period.

(C) Tax must be paid on any trailers or semitrailers which are first brought into Texas during a subsequent reporting period.

(D) A vehicle "first brought into Texas" includes those entering Texas for the first time ever, and those entering Texas for the first time:

(i) after a change in ownership or lease contract, or

(ii) while they are operated by a different motor carrier.

(d) Credit for tax paid to another state. If the motor carrier has previously paid any legally imposed sales or use tax to another state upon a vehicle subject to tax under subsections (b) or (c) of this section, a deduction or credit may be taken in accordance with the Tax Code, §157.102(a)(3) or §157.102(c)(1)(D). In computing the proportioned credit allowed, credit may not be taken for sales or use tax previously paid to Texas or another state in excess of the current tax rate multiplied by the purchase price of any vehicle.

(e) Lease price, sales price, and purchase price computations.

(1) Lease price. Lease price may be calculated under either of the following methods.

(A) Lease payment method.

(i) Lease payment is the sum of all payments specified in the lease contract without any deduction for:

(I) lessor's markup;

(II) charges for depreciation; or

(III) charges for accessories attached to the vehicle and included in the same lease contract.

(ii) Lease payment does not include any separately stated charges for:

(I) fuel;

(II) maintenance (separately stated mileage charges that can be directly and solely related to the repair and maintenance of the leased vehicle will be considered to be separately stated maintenance charges);

(III) insurance;

(IV) finance charges; or

(V) pass-through charges such as federal highway use tax, state sales or use taxes, and title and registration fees.

(iii) For purposes of computing the amount of Interstate Motor Carrier Tax that is due, the lease payment may not be less than the amount that would be charged for the lease of the vehicle(s) in the open market for a similar period of time at retail. Retail means 25% of a published standard industry value for the motor vehicle at the inception of the lease for each year or part of a year of the lease contract.

(iv) If the lease payment is based on a variable charge (i.e., a flat mileage rate, percentage of revenue) the lease payment shall be 25% of a published standard industry value at the inception of the lease, for that motor vehicle for each and each part of a year for the contract.

(B) Optional method. Lease price means the sum of the lessor's purchase price plus the lessor mark-up of the leased vehicle, the combined value of which is typically reflected as the original value of schedule A or similar addendum to a lease contract. This amount may not be less than the lessor's capitalized value.

(C) Change of vehicle ownership. No additional tax is due from a motor carrier who had previously been subject to the tax imposed by this chapter on a lease contract provided that the terms of the lease contract and the motor carrier remain unchanged.

(2) Sales price.

(A) Sales price is the total consideration paid or to be paid for a motor vehicle and all accessories attached at the time of sale, without any deduction for any of the following:

(i) the cost of the motor vehicle sold;

(ii) the cost of material used, labor or service costs, interest paid, losses, or any other expenses;

(iii) the cost of transportation of the motor vehicle prior to its sale or purchase; and

(iv) the amount of any manufacturers' or importers' excise tax imposed upon the motor vehicle by the United States.

(B) Sales price does not include any of the following:

(i) cash discounts allowed on sale;

(ii) sales price of a motor vehicle returned by a customer when the full sales price is refunded either in cash or credit;

(iii) the amount charged for labor or services rendered in installing, applying, remodeling or repairing the motor vehicle sold;

(iv) the amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of motor vehicles under conditional sale contracts or other contracts providing for deferred payments of the purchase price;

(v) the value of a motor vehicle taken by a seller in trade as all or a part of the consideration for sale of another motor vehicle; or

(vi) charges for transportation of the motor vehicle after sale.

(3) Purchase price - When computing the amount of interstate motor carrier tax that is due, purchase price includes both the sales price of any vehicle that the motor carrier owns and the lease price of any vehicle which the motor carrier leases without a driver for a time period exceeding 180 days.

(f) Owner-Operator Contracts.

(1) Taxability.

(A) If a motor carrier contracts to hire an owner-operator to transport persons or property over the carrier's routes and under the authority of the carrier's permits, the tax rate is $25 per truck-tractor per contract and $25 per trailer or semitrailer per contract.

(B) The contract between the motor carrier and the owner-operator must be for more than a single trip.

(C) The tax is the responsibility of the motor carrier operating the motor vehicle under the contract (the lessee).

(2) Exclusion. If a sales or use tax equal to or greater than the current tax rate under Tax Code, Chapter 152 has been paid on the purchase price of the motor vehicle or if the tax under the Tax Code, §157.102(a), (b), or (c) has been paid, the $25 tax is not due.

(3) Controlling interest. The $25 tax may not be paid in lieu of the tax due under the Tax Code, §157.102(a), (b), or (c) by a motor carrier contracting with an owner-operator who is controlled or who has controlling interest in the motor carrier.

(4) Operation of a vehicle under contract to another. The $25 tax may not be paid in lieu of the tax due under the Tax Code, §157.102(a), (b), or (c) if the owner-operator operates the motor vehicle in Texas on his own behalf while the motor vehicle is under contract to the other motor carrier.

(g) Trip-Lease Agreements.

(1) Taxability.

(A) If a motor carrier contracts to use equipment under a trip-lease agreement, the tax rate is $5.00 per truck-tractor per contract and $5.00 per trailer or semitrailer per contract.

(B) The tax is the responsibility of the motor carrier operating the motor vehicle under the agreement (the lessee).

(2) Exclusion. If a sales or use tax equal to or greater than the current tax rate under Tax Code, §152 has been paid on the purchase price of the motor vehicle or if the tax under the Tax Code, §157.102(a), (b), or (c) has been paid, the $5.00 tax is not due.

(3) Controlling interest. The $5.00 tax may not be paid in lieu of the tax due under the Tax Code, §157.102(a), (b), or (c) by a motor carrier contracting with a person who is controlled or who has controlling interest in the motor carrier.

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.

Issued in Austin, Texas, on September 27, 1996.

TRD-9614181
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463–4062

Subchapter T. Manufactured Housing Sales and Use Tax

34 TAC §§3.481–3.485

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

The Comptroller of Public Accounts proposes the repeal of §§3.481-3.485, concerning manufactured home, imposition of tax, exemption certificates, use tax, and interstate sales of manufactured housing. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. The sections are being repealed in order to simplify the consolidation of related sections into a single section. The substance of the current §§3.481-3.485 will be included in the new §3.481, concerning imposition and collection of tax.

Mike Reissig, chief revenue estimator, has determined that repeal of the rule will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that there will be no cost or benefit to the public from the repeal of this rule. This repeal is adopted under the Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There are no additional costs to persons who are required to comply with the repeal.

Comments on the repeal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The epeal 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 repeal implements Tax Code, §111.002.

§3.481. Manufactured Home.

§3.482. Imposition of Tax.

§3.483. Exemption Certificates.

§3.484. Use Tax.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614366
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463–4062

34 TAC §3.481

The Comptroller of Public Accounts proposes new §3.481, concerning imposition and collection of tax. The comptroller has determined that the consolidation of sections dealing with similar subject matter will benefit taxpayers by providing a more effective means of obtaining information. Therefore, current §3.481 is being proposed for repeal. The new section consolidates the substance of the current §3.481, concerning manufactured homes, with the substance of §3.482, concerning imposition of tax, §3.483, concerning exemption certificates, §3.484, concerning use tax, and §3.485, concerning interstate sales of manufactured homes. The definitions of religious, charitable, or educational organizations are revised to make them more clear and consistent with the definitions in Franchise Tax §3.541, Hotel Occupancy Tax §3.161, and State Sales and Use Tax §3.322. The new section prescribes the contents of the exemption certificate and adopts the form by reference.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 new information regarding tax responsibilities. The 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 persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Karey W. Barton, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711.

The new section 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 new section implements the Tax Code, §§158.002, 158.051, 158.058, and 158.153.

§3.481. Imposition and Collection of Tax.

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

(1) Charitable or eleemosynary organization-a nonprofit organization devoting all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If the organization engages in any substantial activity other than the activities described in this section, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services which are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision.

(2) Educational organization-a nonprofit organization or governmental entity whose activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An organization that has activities consisting solely of presenting discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The organization will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information by distributing printed publications. Entities that are defined in the Education Code, §61.003, as "institutions of higher education" are recognized for exemption under this provision. Included in the definition of "institutions of higher education" are state and private universities and colleges.

(3) Exempt use-a use to promote the purpose for which an exempt organization was created.

(4) HUD-code manufactured home-a structure constructed on or after June 15, 1976, according to the rules of the United States Department of Housing and Urban Development, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, is built on a permanent chassis and designed to be used as a dwelling with

or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(5) Manufactured home-a HUD-code manufactured home, a mobile home, or modular home. A manufactured home does not include a recreational vehicle, park model, or house trailer, as those terms are defined in this section. Further, it does not include a structure which is not designed as a residence and if constructed since June 15, 1976, would not have been required to have affixed a label or decal issued by the U.S. Department of Housing and Urban Development or by the Texas Department of Licensing and Regulations.

(6) Manufacturer-any person who constructs or assembles manufactured housing for sale, exchange, or lease-purchase within this state.

(7) Mobile home-a structure constructed before June 15, 1976, transportable in one or more sections, which in the traveling mode is eight body feet or more in width or 40 body feet or more in length, or when erected on site is 320 or more square feet, is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air conditioning, and electrical systems.

(8) Modular home-a dwelling constructed in one or more modules at a location other than the homesite, or constructed utilizing one or more modular components, and designed to be used as a permanent residence when the modular components or modules are transported to the homesite and joined together or erected and installed on a permanent foundation. The term includes the plumbing, heating, air-conditioning, and electrical systems. "Modular home" does not include:

(A) housing constructed of sectional or panelized systems not utilizing modular components;

(B) a ready-built home which is constructed so that the entire living area is contained in a single unit or section at a temporary location for the purpose of selling it and moving it to another location; or

(C) any dwelling constructed in modules incorporating concrete as the predominant structural component.

(9) New manufactured home-one that has not been subject to a retail sale.

(10) Park model or house trailer-a structure built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and which is less than eight body feet in width and 40 body feet in length in the traveling mode, and less than 320 square feet when installed or erected on site.

(11) Person-an individual, partnership, company, corporation, association, or other group, however organized.

(12) Recreational vehicle-a vehicle which is self-propelled or designed to be towed by a motor vehicle but is not designed to be used as a permanent dwelling and containing plumbing, heating and electrical systems that may be operated without connection to outside utilities.

(13) Religious organization-a nonprofit organization that is an organized group of people regularly meeting for the primary purpose of holding, conducting and sponsoring religious worship services, according to the rites of their sect. The organization must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An organization that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups who meet for the purpose of holding prayer meetings, bible study or revivals.

(14) Retail sale-sale to a consumer as opposed to a sale to a retailer for resale or for further processing and resale.

(15) Retailer-any person engaged in the business of buying for resale, selling, or exchanging manufactured homes or offering them for sale, exchange, or lease-purchase to consumers. No person will be considered a retailer unless engaged in the sale, exchange, or lease-purchase of two or more manufactured homes to consumers in any consecutive 12-month period.

(16) Sales price-the total amount to be paid as set forth in the invoice or bill of sale, excluding any separately stated shipping, freight, or delivery charges from the manufacturer to the retailer or other person.

(17) Use-the exercise of any right or power over a manufactured home incident to its ownership, including the sale, lease, or rental, or the incorporation of any manufactured home into real estate or into improvements on real estate.

(18) Used manufactured home-one that has been subject to a retail sale.

(b) Imposition of tax.

(1) The manufactured housing sales tax is due on all new manufactured homes sold by manufacturers on or after March 1, 1982, regardless of the date the manufacturing process was started or when the order for the home was placed.

(A) Invoices dated September 1, 1983, or after, for all new manufactured homes sold by manufacturers, must set forth the amount of tax imposed at the rate of 5.0% of 65% of the sales price.

(B) The manufacturer must report and pay the tax to the comptroller on or before the last day of the month following the month in which the manufactured home was sold.

(C) A manufactured home is presumed to be "sold" at the time the home is sold or consigned by the manufacturer to a retailer or other person in Texas or is shipped to any point in Texas for the use and benefit of any person.

(2) Any person who has purchased a mobile home for personal use and not for resale prior to March 1, 1982, and who has

not paid the motor vehicle sales and use tax imposed on mobile homes prior to March 1, 1982, will be held liable for the motor vehicle sales and use tax rather than the manufactured housing sales and use tax.

(c) Use tax.

(1) Manufactured homes purchased outside Texas.

(A) New manufactured homes. Effective September 1, 1983, a use tax of 5.0% of 65% of the purchase price (equivalent to 3.25% of the purchase price) is due on a manufactured home that was purchased new outside of Texas for use, occupancy, resale or exchange in Texas. The tax is to be paid by the person to whom or for whom the home was sold, shipped or consigned. It is presumed that a manufactured home was not purchased for use or occupancy in this state if the purchaser has purchased the home at a retail sale at least one year prior to its being brought or shipped to Texas.

(B) Used manufactured homes. The use tax does not apply to a manufactured home that was purchased used at a retail sale outside of Texas. Use tax does apply to used manufactured homes acquired prior to March 1, 1982, for resale by a retailer.

(2) Manufactured homes purchased in Texas.

(A) New manufactured homes.

(i) A use tax of 5.0% of 65% of the purchase price (equivalent to 3.25% of the purchase price) is imposed on a manufactured home that was purchased new in Texas.

(ii) The use tax is not due if the manufacturer has paid the sales tax on the home to this state. It will be presumed that the sales tax has been paid on a manufactured home sold, shipped or consigned by the manufacturer to a retailer or other person in Texas. The comptroller, the manufacturer, the retailer, and the user of the home may introduce evidence to establish whether or not the sales tax has been paid.

(B) Used manufactured homes. The use tax does not apply to a manufactured home purchased used at retail in Texas. Use tax does apply to a used manufactured home acquired prior to March 1, 1982, for resale by a retailer.

(3) A credit equal to the amount of any legally imposed sales or use tax paid to another state on a manufactured home may be taken against the use tax imposed in this state.

(4) The use tax imposed is to be paid directly to the comptroller by the person to whom or for whom the home was sold, shipped or consigned. The use tax is due and payable by the last day of the month following the month after the home is sold, shipped or consigned to a person in Texas.

(d) Interstate sales of manufactured housing.

(1) A manufacturer engaged in business in Texas but located outside this state must collect and remit to the comptroller the manufactured housing sales tax on the initial sale, shipment or consignment of a manufactured home to a retailer or other person in this state.

(2) The sales tax is not imposed on a manufactured home that is sold, shipped, or consigned to a retailer or other person when a manufacturer located in Texas ships the home to a point outside this state by means of:

(A) the facilities of the manufacturer; or

(B) delivery by the manufacturer to a carrier for shipment under a bill of lading to a consignee at a location outside this state.

(3) The sales tax is not imposed on a manufactured home that is sold to a Texas retailer for resale at retail to a resident of another state if the home is transported to and installed for occupancy on a homesite located in another state.

(A) This exemption does not apply if the home is titled or registered in Texas or if the home is used for any purpose other than display prior to being transported outside of the state.

(B) The manufacturer may accept an exemption certificate which has been properly completed and signed by the retailer and the consumer in compliance with subsection (e) of this section.

(C) A retailer who has previously paid the sales tax imposed by this chapter to the manufacturer on a transaction exempt under this rule may claim a credit or a refund from the manufacturer.

(e) Exemption Certificates.

(1) An exemption certificate may be issued by:

(A) the United States, its unincorporated agencies or instrumentalities;

(B) any incorporated agency or instrumentality of the United States wholly owned by the United States or by a corporation wholly owned by the United States;

(C) federal credit unions organized under 12 United States Code, §1768;

(D) the State of Texas, its unincorporated agencies and instrumentalities;

(E) any county, city, special district or other political subdivision of the State of Texas, and any college or university created or authorized by the State of Texas;

(F) nonprofit corporations formed under the Development Corporation Act of 1979 or the Health Facilities Development Act of 1981 when purchasing items for their exclusive use and benefit. The exemption does not apply to items purchased by the corporation to be lent, sold, leased or rented;

(G) any organization created for religious, educational, charitable, or eleemosynary purposes, provided that such organization must have requested and been granted exempt status by the Comptroller. In order to qualify for exempt status the organization must meet all of the following requirements:

(i) An organization must be organized or formed solely to conduct one or more exempt activities. All documents necessary to prove the purpose for which an organization is formed will be considered when exempt status is sought.

(ii) An organization must devote its operations exclusively to one or more exempt activities.

(iii) An organization must dedicate its assets in perpetuity to one or more exempt activities.

(iv) No profit or gain may pass directly or indirectly to any private shareholder or individual. All salaries or other benefits

furnished officers and employees must be commensurate with the services actually rendered.

(H) A resident of another state who purchases a new manufactured home from a Texas retailer for immediate transport, installation, and occupancy at a homesite located outside of Texas, provided the home:

(i) has not been used by the retailer for any purpose other than display; and

(ii) is not titled or registered in Texas.

(2) A manufacturer who accepts an exemption certificate in good faith is relieved of the responsibility for collecting the tax as required by the Tax Code, §158.053. A retailer must submit to the manufacturer an exemption certificate which has been signed and completed by itself and the purchaser.

(A) A retailer must keep a copy of the exemption certificate attached to the invoice or bill of sale transferring title to the purchaser.

(B) The manufacturer must retain the original of the exemption certificate attached to the invoice or bill of sale.

(3) Any person who issues an exemption certificate for a manufactured home and then uses the home for other than exempt use will be liable for the tax. The tax will be based on the selling price of the manufactured home to the person who issued the exemption certificate.

(4) The exemption certificate must include:

(A) names and addresses of the manufacturer, retailer, and purchaser;

(B) a description of the manufactured home;

(C) the address where the manufactured home will be installed;

(D) reason for exemption; and

(E) signatures of both the retailer and purchaser.

(5) The comptroller adopts the certificate by reference. Copies are available for inspection at the office of the *Texas Register* or may be obtained from the Comptroller of Public Accounts, Tax Policy Division, 111 West Sixth Street, Austin, Texas 78701-2913. Copies may also be requested by calling our toll-free number 1-800-252-1382. In Austin call 463-4600. (From a Telecommunication Device for the Deaf (TDD) only, call 1-800-248-4099 toll free. In Austin, the local TDD number is 463-4621.

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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Martin Cherry
Chief, General Law
Comptroller of Public Accounts
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Chapter 9. Property Tax Administration

Subchapter B. Performance Audit Administration

34 TAC §9.201

The Comptroller of Public Accounts proposes new §9.201, concerning conduct and procedures for appraisal district performance audits. The comptroller has determined that the consolidation of sections of similar subject matter will benefit the customer by providing information in a more efficient manner. The new rule consolidates the substance of the current §§9.5101-9.5107, concerning request for performance audit, pre-audit conference, cost estimate of performance audit, security requirements for audit costs, notice of commencement of audit, performance audit procedures and report requirements, and discontinuation of audit.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 information in a more efficient manner. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The new section implements the Tax Code, §5.12 and §5.13.

§9.201. Performance Audit Procedures.

(a) The following parties may request a performance audit of an appraisal district under this section as provided by the Tax Code, §5.12:

(1) the governing bodies of a majority of the taxing units participating in an appraisal district;

(2) the governing bodies of a majority of the taxing units entitled to vote on the appointment of appraisal district directors;

(3) the owners of not less than 10% of the number of accounts or the owners of not less than 10% of the number of parcels of property established by the Comptroller of Public Accounts for purposes of the study conducted under the Government Code, §403.302, if the class constitutes at least 5.0% of the appraised value of taxable property within the district in the preceding year; or

(4) the owners of property representing not less than 10% of the appraised value of all property in the district belonging to a class of property established for purposes of the study conducted by the Comptroller of Public Accounts under the Government Code, §403.302, if the class constitutes at least 5.0% of the appraised value of taxable property in the district in the preceding year.

(b) A performance audit must be requested in writing on a Comptroller of Public Accounts form. Taxing units must use Comptroller of Public Accounts Form 50-239. Property owners must use Comptroller of Public Accounts Form 50-238. Comptroller of Public Accounts Forms 50-238 and 50-239 are adopted by reference. Copies of the forms can be obtained from the Comptroller of Public Accounts, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

(c) A request for a performance audit must contain the following information:

(1) a request from taxing units must include the name and original signature of the presiding officer of each requesting unit and copy of the resolution or other evidence of official action that authorizes the request;

(2) a request from property owners must include the name and original signature of each requesting property owner, the account or parcel number(s) of the owner's property, and the appraised value of the property the preceding tax year;

(3) the name of the appraisal district that is the subject of the request;

(4) information showing that the parties to the request meet all requirements for requesting a performance audit established by the Tax Code, §5.12(b) and (c);

(5) whether the performance audit requested is a general audit or is to be limited to one or more specific areas of performances, and identifying the specific areas; and

(6) the designation of an individual as the sole representative of all parties to the request for performance audit. All matters pertaining to the audit and requiring communications or transactions between the comptroller and the parties making the request will be directed by the comptroller to the requested parties through the designated representative.

(d) A general audit shall consider and report on the following areas of performance:

(1) the extent to which the district complies with applicable law or generally accepted standards of appraisal or other relevant practice;

(2) the uniformity and level of appraisal of major kinds of property and the cause of any significant deviations from ideal uniformity and equality of appraisal of major kinds of property;

(3) duplication of effort and efficiency of operation;

(4) the general efficiency, quality of service, and qualification of appraisal district personnel; and

(5) except as otherwise provided by subsection (e) of this section, any other matter included in the request for the audit.

(e) Parties may not request an audit of:

(1) the financial condition of the appraisal district;

(2) an appraisal district's tax collections;

(3) an appraisal district function that is not required of the appraisal district by the Tax Code, the Education Code, or other laws of the state of Texas;

(4) a function the appraisal district performs under interlocal contracts or pursuant to a consolidation election held under the Tax Code, §6.26;

(5) an action of an individual not directly related to the performance of the appraisal district;

(6) an alleged criminal act or act of official misconduct as defined in the Penal Code;

(7) the value of a particular property; the grant or denial of an exemption in a particular case, the grant or denial of special appraisal to a particular property, the situs of a particular property, or similar matters involving individual properties that are properly in the jurisdiction of the appraisal review board;

(8) an issue other than the level of appraisal or degree of uniformity of a category of property or of all property in the appraisal district that is directly involved in litigation; or

(9) a matter that involves actions or determinations in any year earlier than the year of the request.

(f) The comptroller shall approve all requests for performance audits meeting the requirements set forth within this section.

(g) The comptroller shall disapprove those requests for performance audits that do not meet the requirements of this section and those portions of requests for performance audits containing requests to audit any of the areas listed within subsection (e) of this section.

(h) For purposes of this chapter the property value study conducted by the comptroller under the Government Code, §403.302, and the Tax Code, §5.10, is a performance audit on a matter of uniformity and level of appraisal of property in an appraisal district.

(i) The comptroller shall send written notice of an audit request to the presiding officer of the appraisal district board of directors and to the chief appraiser within seven days after receipt of the request.

(j) Following approval of an audit request, the comptroller may require a pre-audit conference with the requesting parties or their representative. The purpose of the conference will be to clarify the elements of the audit request and to provide a foundation for an accurate cost estimate.

(k) Prior to the start of a performance audit, the comptroller shall prepare and deliver to the requesting parties an estimate of anticipated costs of conducting the audit. Costs include expenses related to salaries, professional fees, travel, reproduction or other printing services, and consumable supplies that are directly attributable to conducting the audit.

(l) If at any time during the audit the comptroller finds that additional costs are anticipated above the original cost estimate, the comptroller shall amend the costs.

(m) Following completion of a cost estimate, the comptroller shall direct the requesting parties to deposit with the comptroller security in the amount of the cost estimate to secure payment of the costs of conducting the audit.

(n) The security required by subsection (m) shall be a cash deposit or other financial security the comptroller determines is adequate to cover the expected costs to the comptroller of conducting the audit.

(o) Security shall be deposited in the name of or assigned to the Comptroller of Public Accounts.

(p) If the comptroller finds that costs are anticipated above the cost estimate, he may require additional security from the requesting parties.

(q) Following the satisfaction of all security requirements, the comptroller shall provide written notice of the commencement date of the audit. Notice shall be made to the authorized representative of the requesting parties, to the presiding officer of the appraisal district board of directors, and to the chief appraiser at least 14 days prior to the beginning of field work on the audit.

(r) The comptroller staff shall develop standards and procedures for conducting performance audits under this chapter.

(s) Following payment of the costs of conducting the audit and completing the report, the comptroller shall report the results of its audit. The report shall address all elements of the request as approved by the comptroller. If the request is for an audit limited to one or more particular matters, the report shall be limited to those matters. The report shall be in writing to the governing body of each taxing unit that participates in the appraisal district, to the chief appraiser and to the presiding officer of the appraisal district board of directors. If the audit was requested by property owners, a written report shall also be provided to the representative of the property owners who requested the audit.

(t) The comptroller may discontinue the audit in whole or in part:

(1) if requested to do so by the requesting parties;

(2) if any matter within the audit request becomes the subject of litigation or protest or challenge before the appraisal review board in the county; or

(3) if any matter within the audit request becomes the subject of a criminal investigation or prosecution.

(u) If the audit is discontinued, the comptroller shall make and distribute a report of costs incurred and elements of the request considered by the comptroller, if any.

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 C. Appraisal District Administration

34 TAC §§9.401, 9.403–9.407, 9.411

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

The Comptroller of Public Accounts proposes the repeal of §§9.401, 9.403-9.407, and 9.411, concerning exemption applications for charitable organizations, miscellaneous exemptions, application for exemption of goods exported from Texas, exemption applications for residence homesteads, exemption applications for charitable organizations improving property for low- income housing, application for exemption for cotton stored in a warehouse, and exemption application for pollution control property. The rules are being repealed because their provisions are being transferred to §9.415 without substantive change. The transfer will make it easier for the persons affected by those rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeals will benefit the public by providing them with information in a more efficient manner. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §11.43(f).

§9.401. Exemption Applications for Charitable Organizations.

§9.403. Miscellaneous Exemptions.

§9.404. Application for Exemption of Goods Exported from Texas.

§9.405. Exemption Applications for Residence Homesteads.

§9.406. Exemption Applications for Charitable Organizations Improving Property for Low- Income Housing.

§9.407. Application for Exemption for Cotton Stored in a Warehouse.

§9.411. Exemption Application for Pollution Control Property.

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

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34 TAC §9.415

The Comptroller of Public Accounts proposes new §9.415, concerning applications for property tax exemptions. The comptroller has determined that the consolidation of sections of similar

subject matter will benefit the customer by providing information in a more efficient manner. The new rule consolidates the substance of the current §§9.401, 9.403-9.407, 9.411 and 9.3018-9.3020, concerning model exemption application forms.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 information in a more efficient manner. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller with the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The new section implements the Tax Code, §§11.111, 11.13, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a)-(k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.29, 11.30, 11.31 and 11.437.

§9.415. Applications for Property Tax Exemptions.

(a) Each appraisal office shall prepare applications for the exemptions provided by the Tax Code, §§11.111, 11.13, 11.17, 11.18, 11.181, 11.19, 11.20, 11.21, 11.22, 11.23(a)-(k), 11.24, 11.251, 11.27, 11.271, 11.28, 11.29, 11.30, 11.31 and 11.437, and make copies of each form available to the public.

(b) Each application must require the applicant to provide all information required by the comptroller's model form. Each application must substantially conform in form to the appropriate model form. The application may require information in addition to that required by the model form.

(c) Where the application contains or requires other information, the information required by this section shall be printed on the front of the form.

(d) If the chief appraiser routinely requires supporting documentation for the exemption, the appraisal office shall note on the application the types of documentation required.

(e) Each application shall require the applicant to sign and date the application.

(f) All applications shall include in boldface type beneath the space for the signature and date, a notice of the penalties prescribed under the Penal Code, §37.10, for making or filing an application containing a false statement.

(g) An application for the exemption, as provided by the Tax Code, §11.13, for residence homesteads; §11.17, for cemeteries; §11.18, for charitable organizations; §11.19, for youth spiritual, mental, and physical development associations; §11.20, for religious organizations; §11.21, for privately owned schools; §11.22, for disabled veterans and their survivors; §11.23(j), for a medical center development; §11.29, for dredge disposal site; §11.30, for a nonprofit water supply or wastewater services corporation; and §11.31, for pollution control property shall state that:

(1) the exemption need not be applied for annually;

(2) that the applicant has a duty to notify the chief appraiser in writing before the next May 1 following the date the applicant's entitlement to an exemption ends, that the applicant no longer qualifies for the exemption; and

(3) that the chief appraiser may require an applicant to reapply by delivering written notice to the applicant with a new application.

(h) With the application for exemption for residence homesteads (Tax Code, §11.13), the appraisal office shall provide a list of taxing units served by the appraisal district, together with all residential homestead exemptions each offers.

(i) If the chief appraiser learns of the death of a person qualified for over-65 homestead exemptions (Tax Code, §11.13) and it appears that the person's spouse has acquired ownership of the homestead, the chief appraiser should require the surviving spouse to file a new homestead exemption application. Based on the information provided in the new application, the chief appraiser shall determine whether the surviving spouse qualifies for homestead exemptions, including over-65 exemptions, and whether the surviving spouse may retain the tax ceiling for school tax purposes established on the homestead by the decedent.

(j) The following model forms are adopted by reference:

(1) application for transitional housing property tax exemption (Form 50-140);

(2) application for residence homesteads (Form 50-114);

(3) application for cemetery exemption (Form 50-120);

(4) application for charitable organizations (Form 50-115);

(5) application(s) for charitable organization providing low-income housing (Form 50-242-1 and Form 50-243);

(6) application for youth spiritual, mental, and physical development organizations (Form 50- 118);

(7) application for religious organizations (Form 50-117);

(8) application for privately owned schools (Form 50-119);

(9) application for disabled veteran's or survivor's exemption (Form 50-135);

(10) application for miscellaneous property tax exemptions (Form 50-128);

(11) application for theater school property tax exemption (Form 50-125);

(12) application for historic sites property tax exemption (Form 50-122);

(13) application for goods exported from Texas (freeport exemption) (Form 50-113);

(14) application for solar and wind-powered energy device exemption (Form 50-123);

(15) application for property tax abatement exemption (Form 50-116);

(16) application for stored offshore drilling rig exemption (Form 50-124);

(17) application for dredge disposal site exemption (Form 50-121);

(18) application for nonprofit water supply or wastewater services corporation (Form 50-214);

(19) application for pollution control property (Form 50-248); and

(20) application for cotton stored in a Warehouse (Form 50-245).

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

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Subchapter H. Tax Record Requirements

34 TAC §§9.3018–9.3020

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

The Comptroller of Public Accounts proposes the repeal of §§9.3018-9.3020, concerning exemption applications for youth spiritual, mental, and physical development organizations; exemption applications for religious organizations; and exemption applications for privately owned schools. The rules are being repealed because their provisions are being transferred to §9.415 without substantive change. The transfer will make it easier for the persons affected by those rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeals will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §11.43(f).

§9.3018. Exemption Applications for Youth Spiritual, Mental, and Physical Development Organizations.
§9.3019. Exemption Applications for Religious Organizations.
§9.3020. Exemption Applications for Privately Owned Schools.

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

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Subchapter I. Validation Procedures

34 TAC §§9.4012, 9.4021–9.4025

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

The Comptroller of Public Accounts proposes the repeal of §§9.4012, 9.4021-9.4025, concerning the allocation of taxable value of vessels and other watercraft, of qualified property used in interstate or foreign commerce, and of aircraft property. The rules are being repealed because their provisions are being transferred to §9.4033, concerning allocation of value, without substantive change. The transfer will make it easier for the persons affected by those rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeals will benefit the public by providing them with new information regarding their tax responsibilities. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §111.002 and §111.0022, which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §§21.02, 21.021, 21.03, 21.031, and 21.05.

§9.4012. Allocation of Vessels and Other Watercraft.
§9.4021. Allocation of Value for Property Used in Interstate and Foreign Commerce.

§9.4022. Application for Allocation of Value.
§9.4023. Guidelines for Determination of Jurisdiction to Tax.
§9.4024. Allocation of Value.
§9.4025. Action on Applications.

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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34 TAC §9.4033

The Comptroller of Public Accounts proposes new §9.4033, concerning the allocation of taxable value of vessels and other watercraft, qualified property used in interstate or foreign commerce, and aircraft property. The comptroller has determined that the consolidation of sections of similar subject matter will benefit the customer by providing information in a more efficient manner. The new rule consolidates the substance of the current §9.4012 and §§9.4021-9.4025, concerning allocation of value by appraisal districts.

The new section sets forth how appraisal districts allocate taxable value as required by the Tax Code, §§21.02, 21.021, 21.03, 21.031, and 21.05.

Mike Reissig, chief revenue estimator, has determined that for the first five-year period the rule will be in effect there will be no significant revenue impact on the state or local government.

Mr. Reissig 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 information in a more efficient manner. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule.

Comments on the section may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The new section is proposed under the Tax Code, §111.002 and §111.0022, which provide the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The new section implements the Tax Code §§21.02, 21.021, 21.03, 21.031, and 21.05.

§9.4033. Allocation of Value.

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

(1) Commercial instrument or commercial equipment-Tangible personal property used for a business purpose, which includes, but is not limited to, aircraft, rolling stock not owned or leased by a railroad, motor vehicle, shipping containers, vessels and watercraft (except for special purpose vessels and watercraft used as an instrumentality of commerce as defined in the Tax Code, §21.031), mobile construction or drilling equipment, and mobile equipment of any other sort. The term does not include goods, wares, ores, or merchandise held for sale or resale, stored, warehoused, or in the process of assembly, manufacture, or refinement on January 1.

(2) Jurisdiction to tax-The legal power to levy a property tax on a property, regardless of whether the power to tax is exercised.

(3) Situs jurisdiction-A taxing unit, state, or nation that has jurisdiction to tax a property because of the property's location or use, or because of the owner's domicile or principal place of business.

(4) Used continually-Used several times on regular routes or for several tasks in close succession throughout the year.

(b) A property owner may apply for the allocation of total market value of a vessel, special-purpose vessel, or other watercraft.

(1) The allocation of taxable value of vessels and other watercraft used outside this state shall be determined according to the provisions of the Tax Code, §21.021 and §21.031.

(2) To receive an allocation of value for vessels and other watercraft, a property owner must apply for the allocation on a form that substantially complies with the appropriate form prescribed or approved by the Comptroller of Public Accounts. A person filing an allocation application form shall include all information required by the form. The application must be filed with the chief appraiser for the district in which the property is taxable and must be filed prior to the approval of appraisal records by the appraisal board. Model Application for Interstate Allocation of Vessels or Other Watercraft (Form 50-146-1) is adopted by reference.

(3) If the chief appraiser determines that he needs information in addition to that furnished on the application, he may request additional information by written notice delivered to the property owner. A taxpayer shall furnish any additional information required within 15 days after the date the notice is mailed.

(c) The chief appraiser shall allocate the market value of that property used in interstate or foreign commerce that qualifies for allocation under this subsection.

(1) Property qualifies for allocation if it:

(A) constitutes a commercial instrument or commercial equipment;

(B) is used for a business purpose;

(C) has taxable situs in a taxing unit within the appraisal district as provided by the Tax Code, §21.02 or §21.021;

(D) is used continually outside Texas in interstate or foreign commerce, whether regularly or irregularly.

(2) A commercial instrument or item of business equipment is present in the state for more than a temporary period if:

(A) its owner maintains one or more places of business in this state and the property is present in this state on January 1 or at any time during the 12 months preceding January 1;

(B) the property has contact with this state of a character that would permit this state to tax it under applicable federal law.

(d) A property owner who is entitled to an allocation of property must file a rendition form that provides enough information necessary to prove the entitlement to allocation and permit the chief appraiser to apply an allocation formula appropriate to the subject property. An appraisal district may use a rendition form that substantially complies with the appropriate Comptroller of Public Accounts allocation-rendition form. Each form shall require the property owner to identify the property that is the subject of the rendition and provide information measuring the use of the property within Texas and within other states or nations. The form must permit the property owner to state an opinion of the total market value of the property and the amount of value that should be allocated to each taxing unit in which the property has situs. Model Rendition of Property Qualified for Allocation of Value (Form 50-145-1) is adopted by reference.

(e) The guidelines for determination of jurisdiction to tax are as follows.

(1) The chief appraiser shall determine whether property is within the taxing jurisdiction of another state or nation from the evidence supplied by the property owner. The burden of proof in establishing such jurisdiction is upon the property owner.

(2) The State of Texas has jurisdiction to tax property if:

(A) it is physically present within the State of Texas on January 1 for more than a temporary period;

(B) it has been used continually in Texas during the 12 months preceding January 1, regardless of its location on January 1; or

(C) its owner resides or does business in Texas and the property is outside Texas for a temporary period on January 1.

(3) Property is within the jurisdiction to tax of another state or nation if:

(A) it is physically present within that state or nation's boundaries on the state or nation's property tax lien date for more than a temporary period;

(B) it has been used continually in the state or nation during the 12 months preceding January 1, regardless of its location on January 1;

(C) its owner resides or does business in that state or nation and the property is outside that state or nation for temporary period on January 1;

(D) the state or nation has in fact assessed a property tax against the property.

(4) Property is neither physically present nor used in a jurisdiction when it flies over the jurisdiction without landing.

(5) Property that leaves the boundaries of this state, and returns without being exposed to the taxing jurisdiction of another state or nation, remains within this state's taxing jurisdiction for the duration of the trip.

(6) Property is not within the jurisdiction to tax of this state or any other state of the United States if:

(A) it is an instrumentality of commerce;

(B) it is owned by a foreign domiciliary;

(C) it is taxed in the nation where its owner is domiciled;

(D) it is used exclusively in foreign commerce; and

(E) it is not present in this state for more than a temporary period on January 1.

(7) The chief appraiser may consider the following evidence in determining where a property has taxable situs:

(A) published schedules, if the property carries passengers and/or cargo on regular routes at regular times;

(B) records kept in the normal course of business, such as mileage, flight, or vessel logs, that indicate where the property has traveled, how long it was located at each destination, and the purpose of its location at each destination;

(C) reports filed with state or national agencies that indicate where the property has traveled, how long it was located at destination, and the purpose of its location at each destination; and

(D) actual tax bills or notices of appraisal or assessment from other jurisdictions.

(f) If the chief appraiser determines that the property was within the taxing jurisdiction of this state and within the taxing jurisdiction of another state or nation for the same calendar year, he shall allocate to each taxing unit in which the property has situs the portion of the property's market value that fairly reflects its use in this state. If an allocation formula specified in this subsection does not fairly reflect the use of the property in this state and other situs jurisdictions, the chief appraiser may use another formula that more adequately reflects use. Such alternate formulas may include revenue-ton miles, equipment load factors, or other measures of property use.

(1) For aircraft property, the chief appraiser shall use the following allocation formula: the fair market value of the aircraft multiplied by a fraction, the numerator of which is the product of 1.5 and the number of revenue departures by the aircraft from Texas during the preceding tax year and the denominator of which is the greater of:

(A) the number of hours in a year (8,760); or

(B) the numerator.

(2) For vessels, the chief appraiser will normally use an allocation formula based on port days. The ratio of the days the vessel spends in port in Texas to total days spent in port in all situs jurisdictions is the allocation ratio.

(3) For motor vehicles and rolling stock, not including vessels or aircraft, the chief appraiser will normally use an allocation formula based on mileage. The ratio of total miles traveled in Texas during the year to the total miles traveled in all situs jurisdictions during the year is the allocation ratio.

(4) For other equipment, the chief appraiser will normally use an allocation formula based on time. The ratio of time spent in Texas during the year to the total time spent in all situs jurisdictions during the year is the allocation ratio.

(g) If the appraisal office allocates the value of property in a given year:

(1) the chief appraiser shall note on the property's appraisal record for the year:

(A) that the allocation has been granted;

(B) the market value of the property;

(C) the allocation formula factor; and

(D) the appraised value of the property after allocation.

(2) the chief appraiser shall retain a record of the allocation for three years after it is granted, including:

(A) the rendition form requesting allocation;

(B) supporting documents filed by the property owner; and

(C) the formula chosen and calculations used in making the allocations.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614365
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463–4028

Subchapter J. Procedures

34 TAC §§9.5101–9.5107

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

The Comptroller of Public Accounts proposes the repeal of §§9.5101-9.5107, concerning procedures for request of appraisal district performance audit, pre-audit conference, cost estimate of performance audit, security requirements for audit costs, notice of commencement of audit, performance audit procedures and report requirements, and discontinuation of audit. The rules are being repealed because their provisions are being transferred to §9.201, concerning performance audit procedures, without substantive change. The transfer will make it easier for the persons affected by those rules to read and interpret them.

Mike Reissig, chief revenue estimator, has determined that repeal of the rules will not result in any fiscal implications to the state or to units of local government.

Mr. Reissig also has determined that the repeals will benefit the public by providing them with information in a more efficient manner. There will be no effect on small businesses. There is no significant anticipated economic cost to persons who are required to comply with the repeals.

Comments on the proposal may be submitted to Larrilyn K. Russell, Manager, Property Tax Division, P.O. Box 13528, Austin, Texas 78711-3528.

The repeals are proposed under the Tax Code, §111.002 and §111.0022 which provides the comptroller the authority to adopt rules for the administration and enforcement of the Tax Code and programs or functions assigned to the comptroller by law.

The repeals implement the Tax Code, §5.12 and §5.13.

§9.5101. Procedures for Request of Performance Audit.

§9.5102. Pre-audit Conference.

§9.5103. Cost Estimate of Performance Audit.

§9.5104. Security Requirements for Audit Costs.

§9.5105. Notice of Commencement of Audit.

§9.5106. Performance Audit Procedures and Report Requirements.

§9.5107. Discontinuation of Audit.

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614364
Martin Cherry
Chief, General Law
Comptroller of Public Accounts
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463–4028

Part IV. Employees Retirement System

Chapter 67. Hearings on Disputed Claims

34 TAC §67.87

The Employees Retirement System of Texas proposes an amendment to §67.87, concerning procedures for presenting oral argument to the board before the final determination of any contested case. The amendment is being proposed to change the procedures to require that a written request be filed with the board at least three working days prior to the day on which the board is to consider the case; otherwise, oral argument will be allowed only at the discretion of the board.

William S. Nail, General Counsel, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Nail 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 clarified procedures by which employees may present oral argument regarding their case to the board. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to William S. Nail, General Counsel, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

The amendment is proposed under Government Code §815.102 which provides the Employees Retirement System of Texas the authority to promulgate rules.

Government Code, Title 8, Subtitle B is affected by this proposed amendment.

§67.87. Oral Argument Before the Board.

Any party may **present** [request] oral argument **to** [before] the board before the final determination of any contested case **by filing with the board a written request to do so at least three working days prior to the day on which the board is to consider the contested case. If such a request is not timely filed**, [but an] oral argument shall be allowed only at the discretion of the board [pursuant to a determination by two or more members that a need for oral argument exists]. In the event that oral argument is allowed and all parties are present and prepared to present oral argument, the case will proceed. Otherwise, **the board may, in its discretion, continue the case to its next meeting** [the case will be continued to the next meeting of the Board. It is anticipated that oral argument would be used only in exceptional cases. A request for oral argument may be incorporated in the exceptions, replies to exceptions, petition for reconsideration, or in a separate pleading.]

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.

Issued in Austin, Texas, on October 2, 1996.

TRD-9614373
Sheila W. Beckett
Executive Director
Employees Retirement System
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 867–3336

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 19. Nursing Facility Requirements for Licensure and Medicaid Certification

The Texas Department of Human Services (DHS) proposes amendments to §19.101, concerning definitions; §19.1807, concerning rate setting methodology; §19.2412, concerning Texas Index for Level of Effort (TILE) assessments; §19.2413, concerning reconsideration of medical necessity (MN) determination and effective dates; and new §19.1812, concerning case mix classification system, in its Nursing Facility Requirements for Licensure and Medicaid Certification chapter. The purpose of the amendments and new section is to specify criteria which must be met to qualify for the rehabilitation/restorative payment group (TILE 202); to explain how TILE classifications are determined and the process for reviewing TILE levels, including requirements for notification prior to a review, opportunities for providers to present additional documentation, and clarification regarding informal reconsiderations and formal appeals; and to specify a TILE error rate (20%) which may result in corrective action.

Terry Trimble, interim commissioner, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Trimble also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a clear explanation of how the TILE classification system is implemented and an improved ability of nursing facilities (NF) to properly assess Medicaid NF residents for payment purposes. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

Questions about the content of this proposal may be directed to Susan Syler at (512) 438-3111 in DHS's Long Term Care Policy Section. Written comments on the proposal may be submitted to Supervisor, Rules Unit, Media and Policy Services-005, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Subchapter B. Definitions

40 TAC §19.101

The amendment is proposed 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.

§19.101. Definitions.

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

[Rehabilitative/restorative nursing-Nursing interventions which promote the resident's ability to adapt and adjust to living as independently and safely as possible. This concept actively focuses on optimal improvement of the resident's physical, mental, and social function.]

Therapy week -A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

TILE 202 restorative nursing-Nursing care and practices, based on a plan of care developed by the restorative team, designed to maintain or improve on goals achieved during physical or occupational therapy. Examples of TILE 202 restorative nursing include training and skill practice in bed mobility, transfers, ambulation, dressing or grooming, and active range of motion.

TILE error -Inaccuracies in a CARE form assessment of a Medicaid recipient which result in an incorrect TILE classification.

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614315
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: December 1, 1996
For further information, please call: (512) 438–3765

Subchapter S. Reimbursement Methodology for Nursing Facilities

40 TAC §19.1807, §19.812

The amendment and new section are proposed 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 and new section implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.1807. Rate Setting Methodology.

(a) Case mix classes. DHS reimbursement rates for **nursing facilities (NFs)** [NFs] vary according to the assessed characteristics of recipient. Rates are determined for 11 case-mix classes of service, plus a 12th, temporary classification assigned by default when assessment data are incomplete or in error.

(b) Reimbursement determination. For reimbursements calculated using cost reports pertaining to providers' fiscal years ending in calendar year 1995 or 1996, the Texas Board of Human Services (board) determines general reimbursements for medical assistance programs for Medicaid recipients under provisions of the Human Resources Code, Chapter 24 (relating to Reimbursement Methodology). For reimbursements calculated using cost reports pertaining to providers' fiscal years ending in 1997 and subsequent years, the board determines general reimbursements for medical assistance programs for Medicaid recipients under provisions of Chapter 20 of this title (relating to Cost Determination Process). The board determines reimbursements for nursing facilities based on consideration of Texas Department of Human Services (DHS) staff recommendations. To develop reimbursement rate recommendations for nursing facilities, DHS staff apply the following procedures.

(1) (No change.)

(2) Case-mix classification system. All Medicaid recipients are classified according to the Texas Index for Level of Effort (TILE) classification system described in **§19.1812 of this title (relating to Case Mix Classification System)** [paragraph (5) of this subsection]. The TILE classification system includes four clinical categories, which are further subdivided on the basis of an activity of daily living (ADL) scale, resulting in a total of 11 TILE case-mix groups. A 12th group is used by default when a recipient's case-mix group membership is indeterminate because of assessment errors or omissions. Each of the 12 case-mix groups, including the default group, is assigned a case-mix index of effort. This index indicates the relative amount of staff time required on average to deliver care to recipients in that group. The case-mix index for each of the 11 TILE groups is determined through statistical and clinical analyses of recipient resource utilization data previously collected in Texas NFs. The lowest index for the 11 TILE groups is used as the case-mix index for the default group.

(3)-(4) (No change.)

[(5) The TILE classification system. The Texas Index for Level of Effort (TILE) classification system is defined in terms of recipient condition and service-descriptors on the Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) form. Classifications are based on criteria for frequency and duration for each descriptor. The TILE classification system includes four clinical categories. These categories are subdivided on the basis of an activities of daily living (ADL) scale that measures functional abilities for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 TILE case-mix classifications.

[(A) Clinical categories. Each recipient is assigned to one of the following four clinical categories:

[(i) The heavy-care group. To qualify for the heavy-care clinical group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments: coma; quadriplegia; stage-3 or -4 decubitus with decubitus care and/or wound- dressing twice daily; non-oral nourishment; daily oral/nasal suctioning; or daily tracheostomy care. The recipient must also have a total ADL score of at least six out of a possible nine.

[(ii) The rehabilitation group. To qualify for the rehabilitation clinical group, a recipient must be receiving physical or occupational therapy at least three times per week and have a documented restorative treatment plan established by the physical or occupational therapist for nursing facility staff to follow. The resident's response to the treatment plan must be documented in the clinical record, and an ongoing review must be conducted by a licensed therapist or nursing staff. The therapy must be ordered by a licensed physician, must be rehabilitative in intent, and must be reimbursed by Medicare or through DHS's Rehabilitative Services System. Specialized services that are identified by a Preadmission Screening and Annual Resident Review (PASARR) and are categorized as maintenance services, are not eligible for this category, unless there is a medical condition or injury that qualifies the resident for rehabilitation services.

[(iii) The clinically unstable group. To qualify for the clinically complex unstable group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments: recent amputation of a limb; seizures; dehydration with intake/output monitoring at least two times per day; incontinence with bowel and bladder management at least three times per day; urinary tract infection with intake/output monitoring at least three times per day; daily oxygen administration; respiratory therapy at least three times per day; or wound dressing at least two times per day.

[(iv) The clinically stable group. This clinical group includes all recipients who do not qualify for the heavy-care, rehabilitation, or clinically unstable group. Recipients in the clinically stable group are included in a mental/behavioral condition subgroup if:

[(I) they have an ADL score of exactly three out of a possible nine; and

[(II) they have at least one of the following cognitive or behavioral characteristics: incoherent/frequent disorientation, daily disruptive behavior, or daily aggressive behavior.

[(B) Computation of the activities of daily living (ADL) scale. The ADL scale is used to assess recipients' daily functional abilities in eating, transferring, and toileting. Each of these activities is rated on a five-point system on the Texas Nursing Facility CARE form. DHS staff recode these ratings on a three-point system. The recoding results in scores that range from one to three for each item and from three to nine for the sum of all items. The combined nine-point scale is used to determine case-mix classifications within the clinical categories.

[(C) Special cases. A recipient who qualifies for more than one of the 11 TILE case-mix groups is classified in the group with the highest case-mix index and associated per diem rate. If a provider incorrectly or incompletely reports data necessary for TILE determination, the recipient is temporarily classified in the default group until the data are corrected.]

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

§19.1812. Case Mix Classification System.

The Case mix classification system is defined in terms of recipient condition, functional performance in activities of daily living (ADL), and level of staff intervention. The classification system is divided into four clinical categories which are further subdivided based on ADL scores that measure functional performance for eating, transferring, and toileting. The combination of clinical categories and ADL measurements yields an array of 11 Texas Index for Level of Effort (TILE) case- mix classifications.

(1) Assessment period. Completion of the Client Assessment Review and Evaluation (CARE) form for assignment of a clinical category or ADL score must be based on the recipient's status in the facility during four weeks immediately preceding the assessment date, except in any of the following instances:

(A) If the recipient has experienced a change in clinical or functional status during the past four weeks and the change appears permanent, the assessment is made on the current (changed) status.

(B) If the recipient has been admitted or readmitted to a facility during the past four weeks, the assessment is based on the status since admission or readmission.

(C) The condition or event which precipitates the need for rehabilitative therapy/restorative nursing may have occurred no more than six months prior to the assessment period. An admission or transfer into a facility could qualify as an event.

(2) Documentation. The documentation in the clinical record must be descriptive and quantitative to allow the accurate completion of the CARE form items relating to the recipient's condition(s), treatment(s), and the ADLs of eating, transferring, and toileting.

(A) In the absence of required facility documentation, the Texas Department of Human Services (DHS) nurse reviewers will use available data, staff interviews, and nursing observation to assign ADL scores.

(B) The required documentation must appear in the clinical record during the assessment period to qualify for a clinical category. Lack of documentation will result in a change to an assessment item for a clinical category.

(C) Lack of, conflicting, or altered documentation could be the basis for an adjustment in TILE.

(D) Suspected fraudulent documentation, such as falsified or fabricated medical records, will result in a referral for investigation to the Medicaid Provider Sanctions Division of the Health and Human Services Commission, as required as part of the state's methods for identification, investigation and referral for fraud under chapter 79, Subchapter V (relating to Fraud or Abuse Involving Medical Providers) and 42 CFR, Part 455 (relating to Program Integrity: Medicaid).

(3) Clinical categories. Each recipient is assigned to one of the following four clinical categories based on qualifying conditions or treatments.

(A) The heavy-care group. To qualify for the heavy-care clinical group, a recipient must have at least one of the following conditions or be receiving at least one of the following treatments, with supporting documentation in the clinical record, and the recipient must have a total ADL score of at least six out of a possible nine.

(i) Coma. Persistent unconsciousness and unresponsiveness from which a resident cannot be aroused must be documented in the assessment period.

(ii) Quadriplegia. Neurologic disorder causing paralysis of the four extremities, excluding loss of movement caused solely by contractures. Paralysis is defined as loss of power of voluntary movement in a muscle through injury or disease of its nerve supply. A description of the recipient's functional abilities and limitations must be documented in the clinical record in the assessment period.

(iii) Stage III or IV decubitus with physician-ordered decubitus care and/or wound dressings twice a day. Decubitus covered by eschar is considered Stage IV. Decubitus must be described and care/dressings must be documented in the assessment period.

(iv) Non-oral administration of 60% or more of the recipient's nourishment. Times, amount, and types of feeding must be documented in the assessment period.

(v) Daily oral or nasal suctioning, which must be documented daily in the assessment period.

(vi) Daily tracheostomy care or suctioning, excluding self-care, which must be documented daily in the assessment period.

(B) The rehabilitation/restorative group. To qualify for the rehabilitation/restorative clinical group, a recipient must receive TILE 202 restorative nursing care as follow-up to rehabilitation

therapy. The TILE 202 restorative nursing and rehabilitation therapy must meet the following criteria with supporting documentation in the clinical record.

(i) The rehabilitation therapy must be:

(I) physical or occupational therapy, ordered by a physician, and provided by a licensed therapist or by certified or licensed occupational or physical therapy assistants (COTA\LPTA) under the supervision of a licensed therapist. Positioning, splinting, decubitus ulcer care, and training nursing staff (as in a functional maintenance program) are excluded from the TILE 202, even if provided by an occupational therapist or physical therapist;

(II) initiated due to an identifiable, documented event, i.e., an illness, injury or physical change or an exacerbation of a chronic illness in the past six months with an associated change in ADL functioning. The functional change must be documented through one of the following:

(-a-) a description of the event or illness and the recipient's functional status before and after the event; or,

(-b-) completion of a Minimum Data Set 2.0 Significant Change and an updated care plan;

(III) expected to result in the recipient's making significant, measurable, functional progress, which must be documented in the therapy goals;

(IV) provided on a one-to-one basis three times per therapy week for at least two therapy weeks; and

(V) reimbursed by Medicare, Medicaid rehabilitative services, or another third party payor.

(ii) The TILE 202 restorative nursing must:

(I) be provided as part of a restorative care plan, based upon the therapist's written plan of care and developed by the restorative team, which must include the therapist and a registered nurse;

(II) begin during the assessment period;

(III) begin within 14 days of the therapist's written restorative plan of care;

(IV) be provided for a minimum of 24 sessions within eight therapy weeks, and must continue as long as clinically indicated; and

(V) be supported by a Restorative Nursing Care Program form, which must document each restorative session and the recipient's response to the restorative plan through:

(-a-) a weekly note by the nursing or therapy staff; and

(-b-) a written monthly review by the licensed nursing staff or a licensed therapist.

(iii) A recipient will be considered to be properly classified in this clinical group if all criteria in clauses (i) and (ii) of this subparagraph are met except clause (i)(IV) and (V) of this subparagraph, which must be met within three months of the date of assessment;

(iv) Payment will be recouped on recipients who do not meet TILE 202 restorative nursing criteria.

(C) The clinically unstable group. To qualify for the clinically unstable group, a recipient must have at least one of the following conditions during the assessment period, with the exception of an amputation, which must have occurred in the six months preceding the assessment date, or be receiving at least one of the following treatments during the assessment period.

(i) Recent amputation of arms, legs, or parts thereof in the six months preceding the assessment date. Date and site of amputation must be documented in the clinical record.

(ii) Seizures, which occurred in the facility, in the assessment period. A description of the seizure and nursing interventions must be documented in the clinical record.

(iii) Dehydration with documented intake/output monitoring (including frequency and amounts of output) on at least two shifts per day. Dehydration that was diagnosed, treated, and resolved outside the facility and is no longer symptomatic is excluded. The signs, symptoms, interventions, and measures taken to prevent recurrence must be documented in the assessment period.

(iv) Acute, symptomatic urinary tract infection (UTI) with a documented intake and output (including frequency and amounts of output) on three shifts a day. UTIs that were diagnosed, treated and resolved outside the facility and are no longer symptomatic and UTIs identified by urinalysis alone are excluded. The signs, symptoms, interventions and measures taken to prevent recurrence must be documented in the assessment period.

(v) Incontinence or a foley catheter, with an individualized bowel or bladder rehabilitation program requiring staff intervention at least three times per day. The program must assess the cause of the incontinence and the rehabilitative potential, and document the interventions and outcomes. The care plan must include the individualized goals and approaches that reflect both the resident and nursing participation in the process. Frequency of staff intervention must be documented.

(vi) Daily oxygen administration, which must be documented daily in the assessment period.

(vii) Respiratory therapy, ordered by a physician, performed by licensed nursing staff or a respiratory therapist, received at least three times per day, and documented in the assessment period. Respiratory therapy includes nebulizers, percussion, cupping, postural drainage, updrafts, and intermittent positive pressure breathing (IPPB) treatments, but excludes inhalers.

(viii) Wound dressing applied to an open wound at least two times per day, excluding simple skin tears and closed abrasions. A description of the wound and the treatment, including frequency, must be documented in the assessment period.

(D) The clinically stable group. This clinical group includes all recipients who do not qualify clinically for the heavy-care, rehabilitation/restorative, or clinically unstable group, and who have an ADL score between 3 and 9. The clinically stable group includes a mental/behavioral condition subgroup. A recipient qualifies for this subgroup if:

(i) they have an ADL score of exactly three; and

(ii) they have at least one of the following cognitive or behavioral characteristics:

(I) incoherent/frequent disorientation requiring daily staff intervention. Orientation problems must be described in the clinical record in the assessment period, including the staff intervention required and its frequency; or

(II) daily disruptive or aggressive behavior, requiring immediate staff intervention. The behaviors must be described in the clinical record, in the assessment period, including the frequency and the required staff intervention.

(4) Computation of the ADL scale. The ADL scale is used to assess recipients' daily functional abilities in eating, transferring and toileting. The facility nurse assessors rate these activities with a value of one to five on the CARE form. The CARE form values are recoded by DHS into a three-point system. The recoding results in points that range from one to three for each item and totals from three to nine for all three items. A recipient's total points for all three ADLs are used to determine case-mix classifications within the clinical categories. The ADLs and their corresponding points on the TILE nine-point scale are:

(A) Transferring, or the process of moving between positions, such as to or from a bed, a chair, or a standing position, but excluding to and from the toilet.

(i) One TILE point is given for recipients rated as:

(I) Independent; no staff assistance required, but recipient may use equipment such as railings, trapeze, etc.

(II) Pro re nata (PRN); recipient requires PRN assistance for transfers.

(ii) Two TILE points are given for recipients rated as "one to transfer;" requires one person continuously for physical or verbal assist on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(iii) Three TILE points are given for recipients rated as:

(I) Two to transfer; requires assistance of two or more staff during the entire activity on 60% or more of the transfers. When assistance is required and for what reason must be documented in the assessment period.

(II) Not Transferred; may be transferred to a stretcher or chair once a week or less, excluding transfers to bath or toilet.

(B) Eating, including the use of an enteral or parenteral tube, but excluding tray set up and food preparation.

(i) One TILE point is given for recipients rated as:

(I) Independent or recipient has chosen not to receive nutrition.

(II) Intermittent assistance; requires verbal or physical assistance less than 60% of the time.

(ii) Two TILE points are given for recipients rated as:

(I) Being trained to feed themselves. An assessment of the retraining potential and a description of the training program must be documented in the clinical record in the assessment period. The retraining program must include a minimum of training at two meals per day.

(II) Requiring assistance to syringe or spoon feed for 60% or more of the time. The type of assistance, when the assistance is required, and for what reason must be documented in the clinical record.

(iii) Three TILE points are given for recipients rated as receiving non-oral feedings for 60% or more of the recipient's nutrition using a tube such as a naso-gastric tube, gastrostromy tube, percutaneous endoscopic gastrostromy tube, or administration of total parenteral nutrition via a central line. The frequency, amounts, routes, and times the non-oral feedings were administered must be documented in the clinical record.

(C) Toileting, or the process of elimination including the use of a bedpan, urinal, bedside commode, or toilet, or ostomy or incontinent care.

(i) One TILE point is given for recipients rated as:

(I) Independent, including the use of special equipment or performing of own incontinent care, self-catheterization, ostomy care.

(II) Requires assistance but can be left alone for privacy. Assistance may include transferring on and off the commode, cleansing after elimination, adjusting clothing, or washing hands.

(ii) Two TILE points are given for recipients rated as incontinent or having an indwelling catheter, including staff-administered ostomy care, incontinence care using protective padding, incontinence briefs, changing clothes, or a propped urinal. A description of what staff are required to do 60% or more of the time must be documented in the clinical record.

(iii) Three TILE points will be given for recipients rated as:

(I) Requiring physical or verbal assist or supervision during entire toileting process, excluding incontinent care, and cannot be left alone. The functional, medical, or behavioral reason the recipient cannot be left alone must be documented in the clinical record in the assessment period.

(II) Receiving scheduled toileting by the staff every two hours during waking hours, or more often if needed by the resident, as incontinence management. Recipient does not initiate process and stays dry 60% or more of the time as the result of staff-initiated scheduled toileting. A description of staff actions and whether the resident was wet or dry each time he/she was taken to the toilet must be documented in the clinical record in the assessment period. Recipients who receive in and out catheterization by the staff two or more times each day are included in this category.

(5) Special cases. A recipient who qualifies for more than one of the 11 TILE case-mix groups is classified in the group with the highest case-mix index and associated per diem rate. If a provider incorrectly or incompletely reports data necessary for TILE determination, the recipient is temporarily classified in the default group until the data are corrected.

(6) Case-mix classifications. Case-mix classifications are determined by the clinical group in combination with the ADL score as follows:

(A) TILE 201; heavy care and an ADL score of 8-9;

(B) TILE 203; heavy care and an ADL score of 6-7;

(C) TILE 202; rehabilitation and an ADL score of at least 3;

(D) TILE 204; clinically unstable and an ADL score of 7-9;

(E) TILE 205; clinically stable and an ADL score of 7-9;

(F) TILE 206; clinically unstable and an ADL score of 4-6;

(G) TILE 207; clinically stable and an ADL score of 5-6;

(H) TILE 208; clinically unstable and an ADL score of 3;

(I) TILE 209; clinically stable and an ADL score of 4;

(J) TILE 210; clinically stable, an ADL score of exactly 3, and includes a mental/behavioral subcategory;

(K) TILE 211; clinically stable and an ADL score of 3

(L) Default TILE; provider incorrectly or incompletely reports data necessary for TILE determination.

(7) Required signatures. The assessment form must be signed by the director of nurses or the acting director of nurses and the facility nurse assessor, one of whom has received TILE training, as required by §19.2412 of this title (relating to Texas Index for Level of Effort (TILE) Assessments). These signatures certify the information claimed is accurate and complete and subject to penalties for falsification, as provided in 42 Code of Federal Regulations, Part 1003.

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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614316
Glenn Scott
General Counsel, Legal Services
Texas Department of Human Services
Proposed date of adoption: December 1, 1996
For further information, please call: (512) 438–3765

Subchapter Y. Medical Review and Re-evaluation

40 TAC §19.2412, §19.2413

The amendments are proposed 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 amendments implement the Human Resources Code, §§22.001-22.030 and §§32.001-32.042.

§19.2412. Texas Index for Level of Effort (TILE) Assessments.

(a) Recipient assessment. Facility nurse assessors assess recipients for TILE determination by completing Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) forms. These assessments establish TILE classifications as described in paragraphs 1-8 of this subsection. Effective April 1, 1995, nurse assessors must have completed a Texas Department of Human Services (DHS) TILE training course and must be registered with the National Heritage Insurance Company (NHIC).

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

(3) One medical necessity review (MNR) is required 180 days after the effective date of the admission assessment. If the MNR indicates a MN for nursing facility care, DHS will notify the facility of the permanent MN. This notification becomes a part of the resident's permanent medical record. A **permanent** MN will be lost only if a resident is discharged to home for over 30 days. The MNR may also establish a new TILE classification.

(4)-(5) (No change.)

(6) A **new** CARE form may be submitted for the purpose of allowing a provider to correct errors previously made in the assessment portion of the form (Items 30, 31, and 50-99). The submission of the correction does not change the schedule for submission of forms or necessarily change the TILE group. Corrections must be submitted within 60 days from the date of assessment **on the incorrect form**. **DHS will not accept requests** [Requests] for changes **submitted:** [after 60 days will not be accepted.]

(A) over 60 days from the date of assessment on the incorrect form; or

(B) after notification of an on-site review date.

(7)-(8) (No change.)

(b) Review and appeal of case-mix assessments. DHS nurse reviewers conduct desk reviews and in-depth, on-site reviews of [samples of] Texas Nursing Facility CARE forms completed by providers to verify TILE and medical necessity information. **The assessment forms of a minimum of ten Medicaid recipients, excluding TILE 211, will be reviewed, unless the low census of a nursing facility precludes the review of ten forms.** Forms expired over 12 months will not be reviewed.

(1) DHS nurse reviewers notify facilities in advance of routine on-site visits regarding the recipients whose medical records will be reviewed, the time period covered by the review, the parts of the record to be reviewed, and the accommodations necessary for the review. Facilities receive a minimum of two working days' notice prior to a routine visit. Less than two days notice may be given to facilities whose last two on-site visits resulted in monitoring, compliance, or vendor hold. No notice is required for visits for investigation of TILE issues, including suspected fraud, or for visits requested by another state agency. If nurse reviewers are prevented from conducting a review based on a facility's actions, TILE rates on the recipients chosen for review will be lowered to the default TILE rate until the review can be accomplished.

(2)[(1)] When a DHS nurse reviewer determines that the TILE classification or permanent MN determination is not substantiated and/or does not accurately reflect the recipient's status, the reviewer will discuss the error and propose corrections with

facility staff and make appropriate corrections **during the review** . **An exit conference is held with facility staff following the review. Additional documentation to support the facility's assessments may be presented at any time during the review process or the exit conference, and adjustments may be made. The facility administrator is given formal notification of all TILE changes within 15 working days of the exit conference** [The facility administrator will be notified of TILE changes by certified mail or by FAX].

(A) DHS recoups funds previously paid to the provider under incorrect TILE classification. DHS pays the nursing facility any increase due to a change in TILE classification.

(B) The change in TILE classification and per diem rate is effective retroactively to the "effective date" of the assessment reviewed.

(C) The change in MN determination is effective on the date of the review. If discharge results, the procedures in §19.502 of this title (relating to Transfer and Discharge) must be followed.

(3)[(2)] If a DHS nurse reviewer and a facility nurse assessor are unable to agree about an assessment, the **provider may request a reconsideration** [facility nurse assessor requests an informal review] by a DHS nurse supervisor. [If the provider disagrees with the findings of the nurse supervisor, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q, of this title (relating to Contract Appeals Process) by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714- 9030. The TILE classification and associated per diem rate specified by the DHS nurse reviewer remain in effect during any period of informal review or formal contract appeal. If the informal review or contract appeal process establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively.]

(A) The request for the reconsideration and all documentation supporting the requested changes must be received by the regional nurse supervisor within 15 days of receipt of formal notification of TILE changes.

(B) The regional nurse supervisor or a state office nurse will review all material submitted by the provider and all information collected during the Utilization and Assessment Review (UAR) review.

(C) The TILE classification and associated per diem rate specified by the DHS nurse reviewer remain in effect during the reconsideration period.

(D) If the reconsideration establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively.

[(3) DHS nurse reviewers notify administrators in advance of their on-site visits regarding the recipients whose medical records will be reviewed, the time period covered by the review, the parts of the record to be reviewed, and the accommodations necessary for the review. If the nurse reviewers are prevented from conducting the review, TILE rates on the recipients chosen for review will be lowered to the default TILE rate until the review can be accomplished.]

(4) If the provider disagrees with the findings of the regional nurse supervisor, the provider may initiate a formal appeal, as stated in Chapter 79, Subchapter Q, of this title (relating to Contract Appeals Process) by submitting a request to the Director, Hearings Department, Mail Code W-613, Texas Department of Human Services, P.O. Box 149030, Austin, Texas 78714-9030 within 15 days of receipt of notification of the results of the reconsideration.

(A) The TILE classification and associated per diem rate specified by the regional nurse supervisor remain in effect during the formal contract appeal.

(B) If the contract appeal process establishes that DHS has changed a TILE classification in error, DHS corrects the error retroactively.

(c) Monitoring. TILE error rates **on the assessment forms reviewed which** exceed 20% [which DHS finds unacceptable] may result in a facility's undergoing a monitoring period. Decisions to institute monitoring will be made by the Utilization and Assessment Review (UAR) staff in state office.

(1)-(2) No change.)

(d) Compliance.

(1) A decision to place a facility on compliance will be made by UAR staff in state office. Compliance may result when a facility has a **20% or greater** [high] error rate on the current **assessment forms reviewed** [review] and one of the following:

(A) **a 20% or greater error rate** [an unacceptable level of improvement] by the end of a monitoring period;

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

(2) **Within a 30-day compliance period, facilities must complete** [DHS allows a facility a compliance period of 30 days to submit] new assessment forms on all recipients not in the original review [to DHS nurse reviewers]. Facilities may not submit forms to NHIC electronically or by mail.

(3) If **a facility has a 20% or greater error rate** [an acceptable level of improvement has not been achieved] by the end of the compliance period, vendor payments to the facility will be held until **the facility has less than a 20% error rate** [an acceptable level of improvement is achieved].

(4) The facility nurse assessor **and the director of nurses** must attend a DHS TILE training course within 60 days of the beginning of the compliance period.

§19.2413. Reconsideration of Medical Necessity (MN) Determination and Effective Dates.

When a facility provides care for a recipient for a period of time not covered by an effective medical necessity determination at admission or completion of Texas Nursing Facility Client Assessment, Review, and Evaluation (CARE) forms between reviews, the Texas Department of Human Services (DHS) will reconsider the effective dates.

(1) (No change.)

(2) Requests for reconsideration **require the completion of a CARE form based on the recipient's status in the facility during the four weeks immediately preceding the first date for which payment is to be recovered, with the exception of the instances noted in §19.1812 (1) of this title (relating to Case Mix Classification System).** [are limited to days that are not covered by

an MN determination and/or an assessment form after November 30, 1991].

(3)-(6) (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.

Issued in Austin, Texas, on October 1, 1996.

TRD-9614317

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: December 1, 1996

For further information, please call: (512) 438–3765

Part XX. Texas Workforce Commission

Chapter 817. Child Labor

40 TAC §§817.4–817.6

The Texas Workforce Commission proposes amendments to §§817.4-817.6, concerning the adoption by reference of federal regulations restricting the employment of children 14 through 17 years of age.

The amendments will conform the rule to state statute while being as consistent as possible with federal law, thus maximizing the ease of compliance with both. Also, the amendments will delete the earlier inadvertent adoption of federal hours restrictions and a sports attendant exemption that are inconsistent with state law. Further, the amendments will transfer the adoption of federal regulations restricting the employment of 14 and 15 year old children in agriculture to the appropriate rule. Finally, the amendments will render the rules more readable.

Chester Skorupa, Legal Counsel, has determined that for the first five-year period that the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Skorupa also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that children will enjoy, to the extent possible, the same protection under state and federal law. Also, employers of children will face more consistent restrictions on that activity.

The only anticipated possible effect on small businesses will be to give parent-owned businesses not subject to federal law more latitude in employing their own children.

There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Chester Skorupa, Legal Services, Texas Workforce Commission Building, 101 East 15th Street, Room 264-F, Austin, Texas 78778 (512) 475-1265

The amendments are proposed under Texas Labor Code, Title 2, Chapter 51, §51.023, which provides the Texas Workforce Commission with the authority to adopt rules necessary to promote the purposes of the Chapter; and §51.014 and §51.015, which requires the Commission to adopt rules consistent with that specific section.

The proposed amendments affect the Texas Labor Code, Title 2, Chapter 51, Sections 51.003, 51.014, 51.015, and 51.033.

§817.4. ***Employment of 14 and 15 Year Old Children*** *[Employment Deemed Hazardous or under Conditions Deemed Detrimental to the Safety, Health, or Well-being of 14 and 15 Year Old Children; Employment Expressly Permitted].*

The commission adopts by reference **§§570.31-570.34 and §§570.70-570.72 of Title 29 of the Code of Federal Regulations. The commission adopts these regulations** [federal child labor regulation 29 Code of Federal Regulations §§570.31-570.35] as state rules governing the employment **of 14 and 15 year old children in Texas. These rules will** [in Texas of children ages 14 and 15, additionally to be applicable where that employment is not subject to the provisions of the federal child labor law found in the] **apply to such employment whether or not that employment is subject to the federal** Fair Labor Standards Act **(FLSA)**, 29 United States Code §201, et seq [,] **The application of this rule is limited to the extent it is consistent with §51.015 of the Texas Labor Code.** [but is subject to Texas Civil Statutes, Article 5181.1, et seq.]

§817.5. ***Employment*** *[Occupations Declared Particularly Hazardous or Detrimental to the Health or Well-being] of 16 and 17 Year Old Children.*

The commission adopts by reference **§§570.50-570.68 of Title 29 of the Code of Federal Regulations. The Commission adopts these regulations as state rules governing the employment of 16 and 17 year old children in Texas. These rules will apply to such employment whether or not that employment is subject to the federal Fair Labor Standards Act (FLSA), 29 United States Code, §201, et seq. The application of this rule is limited to the extent it is consistent with §51.015 of the Texas Labor Code.** [federal child labor regulation 29 Code of Federal Regulations §§570.50-570.72 as state rules governing the employment in Texas of children ages 16 and 17, additionally to be applicable where that employment is not subject to the provisions of the federal child labor law found in the Fair Labor Standards Act, 29 United States Code §201, et seq, but is subject to Texas Civil Statutes, Article 5181.1, et seq]

§817.6. ***Statement of Commission Intent*** *[Statement of Purpose for Adoption by Reference].*

In adopting §817.4 and §817.5 of this title, [By the adoptions by reference in §303.4 and §303.5 of this title (relating to Employment Deemed Hazardous or Under Conditions Deemed Detrimental to the Safety, Health, or Well-being of 14 and 15 Year Old Children; Employment Expressly Permitted; and Occupations Declared Particularly Hazardous or Detrimental to the Health or Well-being of 16 and 17 Year Old Children),] the commission intends **for the federal child labor rules to govern the employment of children in Texas. The commission so intends only to the extent those rules are consistent with Chapter 51 of the Texas Labor Code.** [to provide essentially the same body of substantive rules for the employment of all covered children (14 and 15 year olds and 16 and 17 year olds) under state law that pertain to children under federal 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.

Issued in Austin, Texas, on September 27, 1996.

TRD-9614192
Esther L. Hajdar
Director of Legal Services
Texas Workforce Commission
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463–7583

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TITLE 43. TRANSPORTATION

Part I. Texas Department of Transportation

Chapter 9. Contract Management

Subchapter B. Highway Improvement Contracts

43 TAC §9.18

The Texas Department of Transportation proposes an amendment to §9.18, concerning the contract execution for building contracts.

Section 9.18, presently requires the successful bidder on construction and maintenance contracts to execute and furnish to the department the contract with a performance and payment bond (if required) and a certificate of insurance within 15 days after written notification of award of the contract. However, in the case of building contracts, the section states that the successful bidder must execute and furnish to the department the contract with a performance and payment bond (if required) and a certificate of insurance within 27 days after written notification of award of the contract. The amendment will require the deadline for submission of documents to be consistent by having all highway improvement contracts returned within 15 days.

Frank J. Smith, Director, Budget and Finance Division, has determined that for each year of the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Lawrence J. Zatopek, Director, General Services 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 section.

Mr. Zatopek also has 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 the section will be a reduction in the project delay which occurs between the date a building contract is awarded and the date the contract is executed. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Pursuant to the Administrative Procedures Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the proposed section. The public hearing will be held at 9:00 a.m. on Monday, October 28, 1996, in the first floor delegation room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete records. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who have special communication or accommodation needs and who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information office, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-8588 at least two working days prior to the hearing so that appropriate arrangements can be made.

Comments on the proposed amendment may be submitted to Lawrence J. Zatopek, Director, General Services Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be at 5:00 p.m. on November 13, 1996.

The amendment is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to promulgate rules for the conduct of the work of the Texas Department of Transportation, and Transportation Code, §§203.004-203.005, which require the commission to prescribe rules on all bidders on bids received for contracts awarded for the improvement of the state highway system.

No other statutes, articles, or codes are affected by the proposed amendment.

§9.18. After Contract Award.

(a) Contract execution.

(1) [Construction and maintenance contracts.] Except as provided in paragraph **(2)** [(3)] of this subsection and subparagraph (C) of this paragraph, within 15 days after written notification of award of a [construction or maintenance] contract, the successful bidder must execute and furnish to the department the contract with:

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

[(2) Building contracts. A successful bidder on a building contract must execute the contract and comply with subparagraphs (A) and (B) of paragraph (1) within 27 days after written notification of award of the contract.]

(2) [(3) Construction contracts containing DBE or HUB goals.] Within 15 days after award of the contract the successful bidder on a construction contract containing a DBE or HUB goal who is not a DBE or HUB must submit all the information required by the department relating to the DBE or HUB participation to be used to achieve the contract's DBE or HUB goal. The successful bidder

must comply with paragraph (1)(A) and (B) of this subsection within 15 days after written notification of acceptance by the department of the successful bidder's documentation to achieve the DBE or HUB goal.

(b) (No change.)

(c) Proposal guaranty.

(1) Apparent low bidder. The department will retain the proposal guaranty of the successful bidder until after the contract has been awarded, executed, and bonded. If the successful bidder does not comply with subsection (a) of this section, the proposal guaranty will become the property of the state, not as a penalty but as liquidated damages; provided, however, the department may, based on documentation submitted by the contractor, grant a 15-day extension to comply with the requirements under subsection (a) **(2)** [(3)] of this section. A bidder who forfeits a proposal guaranty will not be considered in future proposals for the same work unless there has been a substantial change in the design of the project subsequent to the forfeiture of the proposal guaranty.

(2) (No change.)

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614217

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 463-8630

Subchapter C. Contracting for Architectural and Engineering

43 TAC §§9.31, 9.33-9.43

The Texas Department of Transportation proposes amendments to §9.31, §9.38, and §9.40, the repeal of §§9.33-9.37 and §9.39, and new §§9.33-9.37, §9.39, and §§9.41-9.43, concerning contracts for architectural and engineering services.

The amendments to §9.31 and §9.38 are necessary to gather the preliminary database information necessary to implement the precertification and selection processes provided by new §§9.33-9.37, §9.39, and §§9.41-9.43 which will be implemented on April 1, 1997. The new processes will provide a more streamlined, cost efficient, and expeditious selection process for architects and engineers by creating a precertification process for architects and engineers and their related subproviders, defining a selection procedure, utilizing data obtained during precertification, and establishing a contract evaluation system.

The amendment to §9.40 provides participation goals for Disadvantaged Business Enterprises (DBES) and for Historically Underutilized Businesses (HUBS).

The amendments to §9.31, §9.38, and §9.40 are proposed to be effective 20 days after filing their final adoption with the Texas Register. The repeal of §§9.33-9.37 and §9.39, and new §§9.33-9.37, §9.39, and §§9.41-9.43 are proposed to be effective April 1, 1997.

Amended §9.31 provides definitions for the words, terms, and acronyms used in this subchapter.

New §9.33 establishes requirements for notice and letter of interest; adds contract or request for proposal number, work category codes, and type of selection to the notice; provides that notices filed by the department be considered as posted; and removes the requirement to publish notices in the newspapers.

New §9.34 specifies the composition of the Consultant Selection Team, which is responsible for selection evaluation; identifies the long list evaluation criteria; defines the selection process for the short list; and provides for notification of all firms submitting a letter of interest that were not selected for the short list.

New §9.35 specifies the purpose of the short list meeting, specifies the contents of the request for proposal, requires written proposals conforming to the format and content specified in the request for proposal, specifies the requirements for receipt of proposals, and provides the proposal evaluation criteria and evaluation scale.

New §9.36 establishes interview requirements, requires interviews with the providers on the short list, and allows telephone interviews at the discretion of the Consultant Selection Team. This section provides for the selection of providers for interview, interview structure, and interview evaluation criteria and evaluation scale.

New §9.37 incorporates the provisions of repealed §9.37, revises the evaluation criteria considered, establishes the final selection process, and provides for the managing officer to submit a recommendation for selection to the Consultant Review Committee for procedural review. If the procedural review is acceptable, the deputy executive director, will concur with the selection. This section provides for publication of the short list and selected providers on an electronic bulletin board; administrative qualification, if not performed prior to selection; and negotiations. This section requires authorization by the managing officer for negotiations to commence with the next ranked provider if negotiations are unsuccessful and clarifies the process for determination of a good faith effort to meet the DBE/HUB goal.

Amended §9.38 creates a provider performance evaluation that can be easily distributed through a computer database and provides for a numerical scoring system for provider performance evaluations.

New §9.39 establishes types of selections performed by the department for architectural and engineering contracts, incorporates the provisions of repealed §9.39, and replaces District Consultant Review Committee with the Consultant Selection Team.

Amended §9.40 changes the department's overall architectural and engineering participation goal for DBES and for HUBS from 30% to a percentage that the department will periodically establish and publish in the Texas Register and other media in order to adjust the goals based on the underutilization of specific groups and to allow flexibility in the DBE and HUB programs based on availability.

New §9.41 provides for the precertification of engineers and architects and their related subproviders, describes the precertification application process, provides publishing annual notice regarding precertification in the Texas Register and on an electronic bulletin board, requires the prime provider and subprovider to be precertified by the deadline for receiving the letter of interest, provides for the creation of the Consultant Certification Information System, and provides an implementation date for use of the Consultant Certification Information System data and precertification selection process. This section provides for provider precertification in multiple technical categories, review for precertification, annual renewal of precertification, and appeal of denial of precertification.

New §9.42 provides for administrative qualification, provides for exceptions to administrative qualification, allows administrative qualification to be performed prior to selection to expedite negotiations upon selection of a provider, requires that administrative qualification be performed prior to contract execution, identifies evaluation factors used in determining administrative qualification, allows the Audit Office to provide financial information to the managing office after final selection, and prohibits consideration of financial information during the selection process.

New §9.43 identifies work groups and categories and qualification requirements by work category.

Frank J. Smith, Director, Budget and Finance Division, has determined that for the first five years the sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections. The anticipated estimated increase in cost to the state is $184,000 for Fiscal Year 1997 and an estimated reduction in cost of $216,000 for Fiscal Years 1998-2001. There are no anticipated fiscal implications for local governments as a result of enforcing or administering the sections.

The cost of compliance with the section for small businesses who do not currently provide an annual overhead audit, will be between $3,000 and $7,500 per year if they are awarded a contract or subcontract greater than $300,000.

There is no anticipated economic cost to persons who are required to comply with the rules as proposed. The average provider should save between $14,000 and $16,000 each year of the next five fiscal years.

Robert L. Wilson, Director, Design Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the sections.

Mr. Wilson also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of the new sections will be to expedite the time required between the publication of notice and execution of a contract with a provider, reduce repetitive paperwork, and ensure the competence and capabilities of providers. Another public benefit will be that the department's goals will be adjusted to reflect availability of DBES and HUBS.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the amendments, repeal, and new sections. The public hearing will be held at Thursday, October 24, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2382, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangements can be made.

Comments on the proposal may be submitted to Robert L. Wilson, Director, Design Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be 5:00 p.m. on November 12, 1996.

The amendments and new sections 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; Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, which sets forth requirements for selection and contracting of architectural and engineering services; Government Code, Chapter 2161, which provides for a HUB Program for contracts that are funded in whole by state funds; and Transportation Code, §201.702, which provides for a DBE Program.

No other statutes, articles, or codes are affected by the proposed amendments, repeal, and new sections.

§9.31. Definitions.

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

AASHTO - American Association of State Highway and Transportation Officials.

Administrative qualification - A department process conducted to determine if a prime provider or subprovider meets the requirements of 23 Code of Federal Registration (CFR) 172.5(c) concerning the administration of engineering and design related service contracts.

CCIS - Consultant Certification Information System.

Construction engineering - The interpretation of plans and specifications and formulation of engineering decisions during the period that the project is under construction.

Construction inspection - Inspection of construction methods and materials used by inspectors who report directly to the professional engineer in responsible charge of the project under construction.

Construction management - Construction engineering performed by the professional engineer in responsible charge of the construction project to direct the contractor concerning changes, additions, or deletions to the project.

Consultant selection team (CST) - The department's managing office team that selects the long list and short list and evaluates proposals and interviews.

FHWA - The Federal Highway Administration.

FONSI - Finding of No Significant Impact.

Graduate engineer - An individual who meets the educational requirements for registration as provided in the Texas Engineering Practice Act.

IESNA - The Illuminating Engineering Society of North America.

Indefinite delivery contract - A contract that contains a general scope of services, maximum contract amount, and contract termination date in which contract rates are negotiated prior to contract execution and work is authorized as needed.

ITS - Intelligent Transportation System.

Long list - The list of qualified providers submitting a letter of interest for a contract.

Managing office - The division, special office, or district with the responsibility for awarding and managing the contract.

Managing officer - The division director, special office director, or district engineer of the managing office.

Overhead guidelines - Instructions prepared by the department's Audit Office to assist the provider in administrative qualification.

Professional engineer - An individual licensed to practice engineering in the State of Texas.

Project specific contract - A contract that contains a specific scope of services, maximum contract amount, and contract termination date and authorizes the provider to perform the entire scope of work.

Registered architect - An individual licensed to practice architecture in the State of Texas.

Registered landscape architect - An individual registered to practice landscape architecture by the Texas Board of Architectural Examiners.

Registered professional land surveyor - An individual licensed to perform land surveying in the State of Texas.

Short List - The list of providers selected from the long list by the CST for further consideration on a department contract.

Short list meeting - A meeting held with the providers on the short list to answer questions regarding the contract and distribute the RFP prior to submittal of proposals or interviews.

Subprovider - A provider proposing to perform work through a contractual agreement with the prime provider.

Technical precertification - A review process conducted by the department to determine if a prime provider or subprovider meets the technical requirements to perform work identified in a work category.

§9.33. Notice and Letter of Interest.

(a) Notice.

(1) Texas Register. The department will prepare a notice identifying a proposed contract or RFP number, work category codes, type of selection, and a due date for providers to send letters of interest to the department. The department will file this notice with the Texas Register to be published no later than the 10th day preceding the deadline for receiving the letter of interest. If the notice fails to appear in the Texas Register, the department will consider the notice posted.

(2) Electronic notice. Not later than the 10th day preceding the deadline for receiving the letter of interest, the department will post on an electronic bulletin board a notice containing the same information as the notice published in the Texas Register.

(3) Organizations. The department will publish quarterly a statewide list of projected contracts for consulting engineering and architectural services and will provide a copy of each list to community, business, and professional organizations for dissemination to their membership.

(b) Letter of interest.

(1) The provider shall send a letter of interest to the department notifying the department of the provider's interest in the contract not later than the deadline published in the notice.

(2) The letter of interest will be limited in length to three pages, unless stated otherwise in the notice. The department will accept a letter of interest by electronic facsimile.

(3) To be considered, providers must be precertified by the deadline for receiving the letter of interest in accordance with §9.41 of this title (relating to Precertification) unless the work category is not listed in §9.43 of this title (relating to Qualification Requirements by Work Group). A notice for a category not listed in §9.43 of this title (relating to Qualification Requirements by Work Group) will state the deadlines for submittal of the letter of interest and qualification information.

(4) The letter of interest shall include:

(A) the contract number;

(B) an organizational chart containing:

(i) names of the prime provider and any subproviders proposed for the team and their contract responsibilities by work category;

(ii) the prime provider's project manager; and

(iii) key personnel proposed for the contract;

(C) team capabilities;

(D) special project related experience;

(E) evidence of compliance with the assigned DBE/ HUB goal through the prime provider or subproviders identified on the team, or a written commitment to make a good faith effort to meet the assigned goal;

(F) project related experience performed since precertification; and

(G) other pertinent information addressed in the notice.

§9.34. Determination of the Short List.

(a) Composition of the Consultant Selection Team. The CST shall be composed of:

(1) the managing office staff member who reports directly to the managing officer and who has been designated by the managing officer to be the chair;

(2) the department project manager; and

(3) two department employees designated by the managing officer.

(b) Long list evaluation. The CST will evaluate each team on the long list to determine the short list based on the criteria described in subsection (c) of this section. The department will review the information submitted in the letter of interest along with data contained in the precertification database identified in §9.41 of this title (relating to Precertification).

(c) Criteria. The CST will consider the following criteria in its review of all interested providers:

(1) past performance scores contained in the database for contracts completed for the department and references from other entities;

(2) project requirements as specified in the notice versus the team capabilities identified in the letter of interest and contained in the database;

(3) special project related experience identified in the letter of interest and contained in the database; and

(4) evidence of compliance with the assigned DBE/HUB goal through the team identified in the letter of interest or a written commitment to make a good faith effort to meet the assigned goal if selected.

(d) Contract selection. The CST will prepare a short list containing a minimum of three of the most highly qualified providers (provided that no fewer than three qualified providers submitted a letter of interest) for further consideration on an individual contract selection. For multiple contract selections, the short list shall contain a minimum number of providers equal to the desired number of contracts plus three providers, provided that no fewer than this number of qualified providers submitted a letter of interest.

(e) Notification. The department will notify all firms submitting a letter of interest that were not selected for the short list.

§9.35. Short List Meeting, Proposals, and Evaluation.

(a) Short list meeting. The managing office may require, or offer the opportunity to conduct, a short list meeting to furnish the RFPs to providers on the short list for use in preparation for proposal submittal or interview. If a short list meeting is held, the department will not accept proposals from or conduct interviews with providers that did not have a representative at the short list meeting. If a short list meeting is not held, the managing office will mail the RFP packet to the members on the short list.

(b) Request for proposals. The RFP will include:

(1) instructions for proposal preparation and submittal and interview;

(2) detailed scope of services to be provided by the department;

(3) detailed scope of services to be provided by the provider;

(4) proposed contract duration;

(5) minimum and preferred proposal qualifications;

(6) minimum and preferred interview qualifications;

(7) a debarment certification form;

(8) a lower tier debarment certification form;

(9) a lobbying certification/disclosure form; and

(10) any special contract requirements.

(c) Proposal format. A written proposal is required. The proposal shall be limited to the specific length and information outlined in the RFP.

(d) Receipt of proposals. A proposal must be received by the date, time, and place specified in the RFP. The department will not accept a proposal by electronic facsimile.

(e) Proposal evaluation criteria. The CST will evaluate proposals based on the following criteria:

(1) understanding of scope of services;

(2) experience of the project manager and project team;

(3) ability to meet the project schedule; and

(4) unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product.

(f) Proposal evaluation scale. The CST will assign a numerical value to the proposal based upon the following evaluation scale of 0 to 3 points per criterion:

(1) 0 = does not meet minimum qualifications;

(2) 1 = meets minimum qualifications;

(3) 2 = meets minimum qualifications and at least half of the preferred qualifications; and

(4) 3 = meets minimum qualifications and meets or exceeds all preferred qualifications.

§9.36. Interviews and Evaluation.

(a) Interviews. The CST will conduct interviews with the providers on the short list. The CST may elect to perform telephone interviews. In order for a member of the CST to score a provider, the member must be present for all interviews. The prime provider's project manager is required to be present for the interview. Lack

of attendance by the project manager may be reason to consider the provider nonresponsive, and dropped from further consideration.

(b) Interview structure. The interview allows the providers to demonstrate their understanding of the project and knowledge of applicable rules, regulations, codes, and special information to be gathered.

(c) Evaluation criteria. The CST will consider the following criteria in its evaluation of the provider's interview:

(1) understanding of the scope of services;

(2) experience of the project manager and project team;

(3) ability to meet the proposed contract schedule;

(4) unique or innovative methods of approaching the proposed work that may save time or money, or result in a better quality product; and

(5) responses to interview questions.

(d) Evaluation scale. The CST will prepare a numerical interview evaluation matrix to evaluate the interview based upon the following scale of 0 to 3 points:

(1) 0 = does not meet minimum qualifications;

(2) 1 = meets minimum qualifications;

(3) 2 = meets minimum qualifications and at least half of the preferred qualifications; and

(4) 3 = meets minimum qualifications and meets or exceeds all preferred qualifications.

§9.37. Selection.

(a) Evaluation criteria. In its evaluation of the provider, the CST will consider:

(1) the CST proposal score, which comprises 30% of the total score; and

(2) the CST interview score, which comprises 70% of the total score.

(b) Tie scores. In the event of a tie, the managing officer will break the tie using the following method.

(1) The first tie breaker will be the CST interview score.

(2) The second tie breaker, if needed, will be the interview score for the experience of the project manager and the project team.

(3) The third tie breaker, if needed, will be the interview score for ability to meet the proposed project schedule.

(c) Summary. The CST will prepare a contract evaluation summary containing the scores of the prime providers on the short list, for consideration by the managing officer.

(d) Submittal of selection. The managing officer will submit the contract evaluation summary, evaluation documentation, certification that the current approved procedures were used and recommendation for selection to the CRC for review. After review, the CRC will advise the deputy executive director, or designee, if approved procedures were followed in the selection. If the procedural review is acceptable, the deputy executive director will concur with the selection.

(e) Notification. The department will:

(1) prepare a letter to notify the provider selected for contract negotiation;

(2) prepare a letter to each of the remaining short list of providers not selected, naming the one or ones selected;

(3) set up a meeting with the selected provider to begin contract negotiations; and

(4) publish the short list and providers selected for contracts on an electronic bulletin board.

(f) Negotiations.

(1) Selected provider. The department will enter into negotiations with the selected provider. The provider shall submit the information requested in the contract, including a work outline, work schedule, and cost proposal. If the information is not submitted to the department prior to selection, the provider shall meet requirements for administrative qualification in accordance with §9.42 of this title (relating to Administrative Qualification) to determine the fairness and reasonableness of the contract price.

(2) Contract execution. The provider shall sign the contract within 35 working days from the date of notification to the provider. The CRC may grant a 30-working day extension. An extension must be authorized before the expiration of the negotiation period or extension. Additional extensions must be authorized by the deputy executive director, for a period not to exceed 30 days.

(3) Selection of alternative providers. If the department is unable to execute a satisfactory contract containing a fair and reasonable price within the allotted time period with the selected provider, negotiations shall formally end with that provider and negotiations shall, upon written approval of the managing officer, begin with the provider ranked next. Negotiations shall be undertaken in this sequence until a contract is awarded.

(4) DBE/HUB goal documentation. The selected provider shall provide written documentation that the provider has met the specified DBE/HUB goal or made a good faith effort to meet the goal in accordance with §9.38(a) of this title (relating to Contract Management), and §9.40 of this title (relating to DBE/HUB Goals). If the provider does not submit such documentation, the department will cease negotiation with the provider and enter into negotiation with the next provider in the order of preference for this contract. Evidence of good faith effort shall be submitted to the managing officer, through the department's project manager, for review and acceptance.

§9.38. Contract Management.

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

(c) Operations.

(1) Management responsibility. The **managing officer** [division, special office, or district administrative officer] requesting the provider contract will manage **the contract** [it].

(2) Project manager. The project manager may not be changed without prior consent of the department.

(3)[(2)] Commencement of work. The provider shall not proceed with any contract work until advised in writing by the department to proceed.

(4) [(3)] Suspension of work. The department may suspend the work by:

(A) verbally notifying the provider;

(B) providing written notification of the suspension;

(C) identifying the reason for suspension; and

(D) identifying approximate length of suspension and payment based on actual work completed as of the date of suspension.

(5) [(4)] Payment on engineering contracts. Payment for eligible costs will be made within 30 days after receiving a correct invoice. Payment may be withheld pending verification of satisfactory work performed. To **receive** [obtain] payment **for services**, the provider shall submit [the following documents] to the department project manager:

(A) a monthly progress report;

(B) an itemized and certified invoice (**department** form 132 or other acceptable format); and

(C) a DBE/HUB report (The BOP may require proof of DBE/HUB use, including submittal of canceled checks that are properly identified by department project number or contract number).

(6) [(5)] Interim audit. The department may require the services of the provider during the construction phase to review shop drawings, plans or procedures, or perform other services related to its design. If these services are anticipated, the department may request an interim audit upon completion and approval of the plans, specifications, and cost estimate.

(d) (No change.)

(e) Errors and omissions.

(1) (No change.)

(2) Procedure.

(A) (No change.)

(B) Resolution. A dispute involving errors and omissions shall be resolved in accordance with **§9.2** [§1.68] of this title (relating to Contract Claim Procedure).

(f) Contract close out.

(1) (No change.)

(2) Time. A contract is ready for close out when:

(A) (No change.)

(B) products **have been** [are] received and accepted;

(C) approval **has been** [is] received from the U.S. Department of Transportation, when federally funded;

(D) payments **have been** [are] made;

(E) audit findings **have been** [are] resolved; and

(F) **the contract expires** [on expiration date,] unless extended by supplemental agreement.

(g) Provider performance evaluations. **If the contract duration is greater than 18 months, the project manager will evaluate the prime provider's or subprovider's performance in the categories of management, cost administration, quality, and timeliness upon completion of a phase, upon exemplary performance, and on an interim basis. The interim basis evaluation will occur not less than once every 12 months, or when the managing office determines that the work is behind schedule or not being performed according to the contract. In all contracts, the prime provider and subprovider will also be evaluated upon completion of the contract. An evaluation of constructability will be performed on an interim basis not less than every 12 months and upon completion of the construction contract, if applicable. The prime provider and subprovider will receive a numerical score in each evaluation category for each work category they performed. The prime provider will also receive an overall contract evaluation in each of the evaluation categories. These performance evaluations will be entered into the CCIS database identified in §9.41 of this title (relating to Precertification), and will be used in determining the qualifications of the prime provider or subprovider in accordance with §9.34 of this title (relating to Determination of the Short List). The evaluations will be given to the prime provider or subprovider for review and comment. Prime provider or subprovider comments, if submitted to the department, will be noted in the database** [Upon completion of the contract, the district, division, or special office will evaluate the provider's performance in the categories of cost administration, quality, timeliness, and constructability. These performance evaluations may be used in determining the qualifications of the provider].

§9.39. Selection Types.

The department will perform three types of contract selections.

(1) Individual contract selection. One contract will result from the contract notice.

(2) Multiple contract selection. More than one contract, of similar work types, will result from the contract notice. The RFP will indicate the number of contracts to result from the notice, and specify a range of scores for prime providers that will be considered equally qualified to perform the work. If more prime providers fall within the specified range than the anticipated number of contracts, prime providers will be selected on a random basis.

(3) Emergency Selection. If the executive director of the department or his or her designee certifies in writing that there is good cause to believe that an emergency situation exists, including hazards to safety and imminent expiration of a contract on an incomplete project, he or she will authorize the CST to select a provider on an emergency basis.

*§9.40. **DBE/HUB Goals** [Affirmative Action].*

(a) The **department** [department's] **will periodically establish** overall **DBE and HUB** participation **goals** [goal for DBEs and HUBs is 30%]. **The goals will be published in the Texas Register and other media as appropriate. Individual contract** [The department] goals will be established [for each contract on an individual basis] to achieve the overall goal.

(b) The **provider will meet the specified goal for DBE/HUB participation or, at** [department requires as] a minimum, **provide**

written documentation of a good faith effort toward meeting the [specified] goal [for DBE/HUB participation].

§9.41. Precertification.

(a) Eligibility. To be eligible to perform work in the categories described in §9.43 of this title (relating to Qualification Requirements by Work Group), a prime provider and a subprovider must be precertified in accordance with this section.

(b) Application.

(1) Professional architects and professional engineers or their related subproviders who desire to be precertified by the department to perform work on architectural or engineering contracts shall submit a completed precertification questionnaire to the CRC for review and determination of precertification status.

(2) A questionnaire, in a form prescribed by the department, or a precertification information packet may be obtained by contacting the Texas Department of Transportation, Design Division - Consultant Review Committee, 125 East 11th Street, Austin, Texas 78701.

(3) The questionnaire will include information concerning the experience of the prime provider or subprovider.

(4) The precertification information packet will include:

(A) a copy of the questionnaire;

(B) instructions regarding the format and length restrictions for data to be submitted;

(C) the requirements for precertification in each category as described in §9.43 of this title (relating to Qualification Requirements by Work Group);

(D) copies of the department's standard evaluation forms;

(E) copies of the department's standard contracts, with attachments;

(F) instructions for administrative qualification; and

(G) department overhead guidelines.

(5) The submittal date for review deadlines as described in subsection (g) of this section shall be the date the precertification questionnaire is received by the CRC.

(6) The precertification of a prime provider or subprovider by the department does not guarantee that work will be awarded to that prime provider or subprovider.

(c) Notice. The department will have published a notice annually in the Texas Register and on an electronic bulletin board requesting prime providers and subproviders to submit information for precertification.

(d) Precertification deadline. Prime providers and subproviders must be precertified in the technical categories by the deadline for receipt of the letter of interest to be eligible for selection. The department will not delay the consultant selection process or contract execution for a prime provider or subprovider that has not been precertified.

(e) CCIS. The department will maintain the CCIS containing qualification information submitted in the precertification questionnaire by the prime provider or subprovider. The department will use information obtained from the CCIS effective April 1, 1997.

(f) Technical precertification. Prime providers and subproviders may be precertified in multiple technical categories. A prime provider or subprovider with one employee who meets the appropriate requirements of multiple categories may be precertified in those categories. Prime providers must be precertified in the categories of work they will be performing, and are not required to be precertified in every category of work involved in the contract. The department will not precertify joint ventures. For a specific contract, prime providers may propose to use subproviders precertified in the other identified categories to supplement their own qualifications by indicating this in the letter of interest.

(g) Precertification review.

(1) Prime providers and subproviders submitting applications for precertification at least 90 days prior to April 1, 1997, will be precertified by April 1, 1997, or notified in writing that they did not meet the requirements for precertification or that additional information is required for review.

(2) Prime providers and subproviders submitting applications between 90 days prior to and 60 days after April 1, 1997, will be precertified within 90 days after April 1, 1997, or notified in writing within the same time period that they did not meet the requirements for precertification or that additional information will be required for review.

(3) Prime providers and subproviders submitting more than 60 days after April 1, 1997, will be precertified within 30 days of receipt of the submittal or notified in writing within the same time period that they did not meet the requirements for precertification or that additional submittals will be required for review.

(4) If requested to submit additional information for review, the prime provider or subprovider shall submit such information within 30 days of receipt of the department's request for such information. If the information is not provided within 30 days after receipt of the request, the application for precertification will be processed with the information available. The department will make a determination on precertification status within 30 days of receipt of the additional information, or by the date specified in paragraph (1) or (2) of this subsection, whichever time period is longer.

(5) The department will consider the following factors in reviewing the precertification questionnaires as specified in §9.43 of this title (relating to Qualification Requirements by Work Group):

(A) current State of Texas license or registration;

(B) personal experience and training; and

(C) other requirements of §9.43 of this title (relating to Qualification Requirements by Work Group).

(h) Annual renewal. Prime providers and subproviders will be assigned an annual renewal date by the department. Prime providers and subproviders must apply for renewal of precertification between 60 and 30 days prior to their annual renewal date. The precertification of a prime provider or subprovider that fails to submit an application for renewal at least 30 days prior to its annual renewal date will expire and the prime provider or subprovider will be ineligible to submit a letter of interest for new contracts.

(i) Appeal. A prime provider or subprovider may appeal denial of precertification by submitting additional information within 30 days of receipt of written notification of denial to the CRC in Austin. This information shall justify why the prime provider or subprovider meets the requirements for precertification. The CRC will review the information and make a determination regarding precertification. The decision of the CRC shall be final.

§9.42. Administrative Qualification.

(a) Exception. Providers' compensation for services included in Group 6 - bridge inspection, Group 12 - materials inspection and testing and/or Group 15 - surveying and mapping of §9.43 of this title (relating to Qualification Requirements by Work Group) is based on units of service rates and administrative qualification is not necessary.

(b) Time to provide information. Prime providers and subproviders may provide information described in this section prior to selection. This information must be provided after selection. The administrative qualification submittal is a separate submittal from the precertification submittal, and is submitted to the Audit Office. Administrative qualification submittals will not be received by the CRC. Submission prior to selection is encouraged to facilitate timely contract execution requirements.

(c) Evaluation factors. The department will consider the following factors in determining qualifications of prime providers or subproviders.

(1) Adequate accounting system. The prime provider or subproviders must demonstrate the existence of an adequate accounting system that meets the department's audit requirements, as evidenced by certification by an independent certified public accountant or governmental agency. The system must be adequate to support all billings made to the department and other clients.

(2) Annual overhead audit. The prime provider or subprovider must submit an annual overhead audit for the most recently completed fiscal year performed by an independent certified public accountant or governmental agency. Prime providers or subproviders who have been in business for less than one complete fiscal year of the provider, have reorganized to the extent that the most recent overhead audit does not reflect a currently valid overhead rate, or have established and operated an accounting system acceptable to the department for a period of less than one year shall prepare a projected overhead rate which will be supported by estimated expenditures in accordance with the department's overhead audit guidelines for the first fiscal year's operations since organization, reorganization, or implementation of the acceptable accounting system. The department's external audit section shall review the estimate and establish a provisional combined overhead rate, which may be used in department contracts until the firm has completed its first fiscal year of operation, at which time the firm shall submit an annual overhead audit performed by an independent certified public accountant or governmental agency.

(A) The audit report shall include statements that the audit was performed in accordance with the criteria required by the department and generally accepted auditing standards including:

(i) Federal Acquisition Regulations, 48 CFR 31;

(ii) department overhead guidelines, a copy of which will be included in the precertification information packet.

(B) The audit report shall describe the estimating system used by the prime provider or subprovider, and state whether estimates are prepared in accordance with the accounting system.

(C) The department may perform overhead audits of any prime provider or subprovider under contract to, or desiring to do business with the department. These audits will be conducted consistent with the criteria outlined in this subsection.

(D) The department may contract with a consultant lacking an approved overhead audit if:

(i) the value of the contract is less than $250,000;

(ii) the prime provider or subprovider can adequately document and support all proposed costs; and

(iii) all other qualification requirements of this subsection are met.

(E) The audit report must be provided within six months after the end of the fiscal year observed by the prime provider or subprovider.

(3) Salary rates. The department will consider current salaries and ranges by classification.

(4) Direct costs. The department will consider other direct costs such as copies, Computer Aided Design and Drafting (CADD), or other direct costs.

(d) Provision of financial information. The department's Audit Office will provide financial information when requested by a managing office upon selection of an engineer for the contract, for use in negotiations.

(e) Prohibited actions. Financial information will not be made available to the CST prior to contract selection.

§9.43. Qualification Requirements by Work Group

(a) Requirements. Prime providers and subproviders may be precertified in the technical groups and categories in accordance with subsection (b) of this section by providing the listed requirements. Unless stated otherwise, when a professional license or registration is required, the experience requirement includes experience gained after professional licensure or registration. Such licenses or registrations shall be those issued by the appropriate Texas professional licensing board.

(b) Work Categories.

(1) Group 1 - transportation systems planning.

(A) Category 1.1.1 - policy planning. This category includes the investigation and development of transportation planning and strategies to meet current or future needs at the state or local level. The firm must employ a minimum of:

(i) one professional engineer with training and experience in areas directly related to policy planning; or

(ii) one professional engineer with proficiency in civil engineering and one planner with training and experience in areas directly related to policy planning.

(B) Category 1.2.1 - systems planning. This category includes development of state or local transportation plans to create complete integrated systems to support movement of people and goods. The firm must employ a minimum of:

(i) one professional engineer with training and experience in areas directly related to systems planning; or

(ii) one professional engineer with proficiency in civil engineering and one planner with training and experience in areas directly related to systems planning.

(C) Category 1.3.1 - subarea/corridor planning. This category includes the study of the feasibility of all modes of transportation corridors at the state or local level to determine the cost effectiveness of the various alternatives to meet specific goals and may include actual route location as a final product. The firm must employ a minimum of:

(i) one professional engineer with training and experience in areas directly related to subarea/corridor planning; or

(ii) one professional engineer with proficiency in civil engineering and one planner with training and experience in areas directly related to subarea/corridor planning.

(D) Category 1.4.1 - land planning/engineering. This category includes planning and engineering in support of assessing the impacts that proposed transportation improvements may have on public and private property. The firm must employ a minimum of:

(i) one professional engineer with training and experience in comprehensive planning or areas directly related to assessing impacts to private property; or

(ii) one professional engineer with proficiency in civil engineering and one planner with training and experience in comprehensive planning or areas directly related to assessing impacts to private property.

(E) Category 1.5.1 - feasibility studies. This category includes investigation of programs or specific projects to determine if they are cost effective and meet the desired goals. The firm must employ a minimum of one professional engineer with:

(i) proficiency in civil engineering; and

(ii) completion of a minimum of two feasibility studies.

(F) Category 1.6.1 - major investment studies. This category includes the investigation of modal and financing alternatives for major transportation projects at the state or local level. The firm must employ a minimum of:

(i) one professional engineer with proficiency in civil engineering and experience or education in social, economic, or environmental impact assessment;

(ii) one person with a bachelor's degree in a physical and a natural science with related experience; and

(iii) one person with a bachelor's degree in a social science with experience in urban planning.

(2) Group 2 - environmental studies.

(A) Category 2.1.1 - traffic noise analysis. This category includes the performance of a traffic noise analysis for a roadway project. The firm must employ one person with:

(i) a bachelor's degree or equivalent experience in environmental studies, urban planning, environmental engineering or a related field; and

(ii) demonstration of experience in use/application of Traffic Noise Guidelines, traffic noise modeling software, and appropriate sound measuring equipment through completion of a minimum of two highway projects at the FONSI level or above.

(B) Category 2.2.1 - air quality analysis. This category includes the performance of an air quality analysis for a roadway project. The firm must employ one person with:

(i) a bachelor's degree or equivalent experience in environmental studies, urban planning, environmental engineering or a related field; and

(ii) demonstration of experience in use/application of air quality guidelines and air quality modeling software through the accurate completion of an air quality analysis for a minimum of two highway projects at the FONSI level or above.

(C) Category 2.3.1 - wetland delineation. This category includes the performance of a wetland delineation according to the United States Corps of Engineers requirements. The firm must employ one person with:

(i) a minimum of one year of field experience in wetland delineation; and

(ii) completion of a Wetland Training Institute or an equivalent one week wetland delineation class.

(D) Category 2.4.0 - United States Corps of Engineers permits. This category includes the following permits:

(i) Category 2.4.1 - nationwide permit. The firm must employ one person with working knowledge of the nationwide permit process and a minimum of one year of experience in nationwide permit determination.

(ii) Category 2.4.2 -§404 (Title 33, United States Code §1344) individual permits (including mitigation and monitoring). The firm must employ one person with working knowledge of the individual §404 Permit process, with one year of experience, and who has applied for and received one individual permit.

(iii) Category 2.4.3 - U. S. Coast Guard and U.S. Corps of Engineers §10 (Title 33, United States Code §403) permits. The firm must employ one person with one year of experience and working knowledge of the Rivers and Harbors Act, §10 who has applied for and received one navigation-related permit.

(E) Category 2.5.1 - water pollution abatement plan. This category includes geologic field assessment and the preparation of pollution abatement plans. The firm must employ one person with:

(i) a background in geology or a related field; and

(ii) working knowledge of the Edwards Aquifer rules.

(F) Category 2.6.0 - protected species coordination. This category includes the following types of biological coordination.

(i) Category 2.6.1 - protected species determination. This category involves the determination of the presence or absence of a protected species. The firm must employ one person with knowledge of the Federal Endangered Species Act, who possesses the required state and federal permits, experience in determining the presence or absence of a protected species, and informal consultation experience and coordination with the U.S. Fish and Wildlife Service.

(ii) Category 2.6.2 - biological assessments. This category includes the preparation of biological assessments. The firm must employ one person with a bachelor's degree in the natural sciences or a related field, working knowledge of the Federal Endangered Species Act, experience including preparation of biological assessments and formal consultation, experience in negotiating with people and resource agencies, and working knowledge of federal, state, and local regulations.

(iii) Category 2.6.3 - biological surveys. The firm must employ one person with a bachelor's degree in the natural sciences or a related field and working knowledge of federal, state, and local regulations, and/or one person with knowledge in habitat recognition, including direct field experience with or as a recognized expert for the species/habitat of concern, and working knowledge of federal, state, and local regulations.

(G) Category 2.7.1 - §4(f) (Title 23, United States Code of Federal Regulations §771.135) and/or §6(f) (Title 49, United States Code §303) evaluations. This category includes §4(f) evaluations, identified in the Department of Transportation Act of 1966, which are conducted when right of way is acquired from publicly owned parks, recreation areas, wildlife or waterfowl refuges, or historic sites, and §6(f) which applies when federal land and water conservation funds are used for improvements to the site. The firm must employ one person:

(i) with a minimum of one year of experience in applying §4(f) and/or §6(f) requirements;

(ii) who has completed a minimum of one successful evaluation; and

(iii) who has received FHWA or other federal agency approval.

(H) Category 2.8.1 - surveys, research and documentation of historic buildings, structures, and objects. This category includes surveys, research, and documentation efforts carried out in accordance with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716) to comply with §106 (Title 16, United States Code §470f) of the National Historic Preservation Act and other state and federal historic preservation related laws and regulations. Associated activities include: delineation of the area of potential effects for projects with the potential to affect historic properties; field surveys and photographic and written documentation on historic properties located within a project's area of potential effects; development of historic contexts that provide an organizational and thematic format for evaluating historic properties; determinations of National Register eligibility for identified historic properties; preparation of historic documentation on affected properties in accordance with the documentation requirements of the Historic American Buildings Survey and the Historic American Engineering Record; evaluation of the effect of projects on significant properties; and the development of management and preservation plans for historic properties. The firm must employ one person with experience working with the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (Volume 48 of the Federal Register, 44716), 36 CFR Part 800, and documentation requirements of the Historic American Buildings Survey and Historic American Engineering Record and:

(i) a master's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of one year of direct experience performing surveys, research or documentation of historic buildings, structures, and objects; or

(ii) a bachelor's degree in architectural history, historic preservation or a closely-related field, with course work in American architectural history and a minimum of three years of direct experience performing surveys, research or documentation of historic buildings, structures, and objects.

(I) Category 2.9.1 - historic architecture. This category includes architectural work to ensure compliance with Secretary of the Interior's Standards for Historic Preservation projects (Volume 48 of the Federal Register, 44716). Associated activities include detailed investigations of historic structures, preparation of historic structure research reports, preparation of plans and specifications for historic preservations projects, development of management plans for individual properties, and preparation of measured drawings for affected historic properties. The firm must employ a registered architect:

(i) with a minimum of two years of full-time experience managing historic preservation projects; or

(ii) who has completed at least one year of graduate study in preservation architecture.

(J) Category 2.10.1 - archaeological surveys, documentation, excavations, testing reports and data recovery plans. This category includes: reconnaissance or intensive archeological surveys performed in accordance with the criteria listed in the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (1982), Reports Relating to Archeological Permits in the Rules of Practice and Procedure for the Antiquities Code of Texas, and performance standards as outlined in the Council of Texas Archaeologists (CTA) Guidelines; documentation of operations that use archeological techniques to obtain and record evidence of human activity or behavior important in history or prehistory; testing and preparation of testing reports to describe the results of work following the investigation and evaluation of archeological sites and/or other historic properties; and data recovery plans that address appropriate strategies and methodologies for excavation and data recovery. The firm must employ a principal investigator:

(i) with a master's degree in archaeology, anthropology, or closely-related field, who has a minimum of one year of full-time professional experience or equivalent specialized training in archaeological research or administration;

(ii) who has a minimum of one year of supervised field and analytic experience in Texas archaeology;

(iii) who is a professional archaeologist who meets the standards of a principal or co-principal investigator, as defined by state standards, with a minimum of one year of full-time professional experience at a supervisory level in archaeological resources;

(iv) who has successfully completed a minimum of five archaeological projects, of equivalent scope, under state permit; and

(v) who has the equipment and personnel necessary to perform the work.

(K) Category 2.11.1 - historical and archival research. This category includes historical and archival research on historic properties or historic archeological sites, the development of research designs to guide historical research efforts, and the development of historic contexts to provide an organizational and thematic format for further research and evaluation of historic properties and historic archaeological sites. The firm must employ one person with:

(i) a master's degree in history or a closely related field with a minimum of one year of full-time experience managing historical and archival research and documentation; or

(ii) a bachelor's degree in history or a closely related field with a minimum of 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, and a minimum of one year of experience managing historical and archival research.

(L) Category 2.12.1 - socio-economic and environmental justice analyses. This category includes: analyzing U. S. Census data for the affected area; identifying changes in land use, land values, and the local tax base; identifying impacts to the business environment to include relocations, construction period impacts, accessibility issues, and effects to employees and customers; estimating the number and type of residential relocations; identifying the availability of comparable replacement housing in accordance with the Uniform Relocation Assistance and Real Property Acquisitions Policies Act of 1970; identifying impacts to community cohesion and the effects to public facilities and services; and identifying and addressing disproportionately high and adverse health and environmental impacts to minority populations and low-income populations in accordance with Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-income Populations (February 11, 1994). The firm must employ one person with:

(i) a bachelor's degree in sociology, economics or related field;

(ii) a minimum of one year of full-time experience performing socio-economic analysis for environmental documents; and

(iii) knowledge of applicable federal, state, and local regulations.

(M) Category 2.13.1 - hazardous materials assessment. This category includes environmental site assessments performed in accordance with protocol established in ASTM 1528 and ASTM 1527, and may also include provision of intrusive sampling of soil and groundwater, typically referred to as a Phase II site assessment. The firm must employ one person with:

(i) a minimum of one year of experience in hazardous materials assessment; and

(ii) the necessary equipment and expertise to perform ASTM 1528 Transaction Screen and ASTM 1527 Phase I Site Assessments.

(N) Category 2.14.1 - environmental document preparation. This category includes the preparation of environmental documents for transportation projects as identified in §2.43(c), (d) and (e) of this title (relating to Highway Construction Projects - State Funds). The firm must employ one person:

(i) with a bachelor's degree or equivalent experience in environmental studies, urban planning, environmental engineering or a related field;

(ii) in responsible charge of the preparation of environmental documents for a minimum of two transportation projects through the issuance of the FONSI;

(iii) with participation in the preparation of and management of environmental documents for a minimum of one environmental impact statement through the Record of Decision; and

(iv) with knowledge of pertinent federal, state, and local environmental regulations.

(3) Group 3 - schematic development. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 3.1.1 - route studies & schematic design - minor roadways. This category includes the preliminary alignment and layout of minor roadways as described in Category 4.1.1. The firm must employ a minimum of one professional engineer with three years experience in:

(i) design of minor roadways; and

(ii) capacity and level of service analysis.

(B) Category 3.2.1 - route studies & schematic design - major roadways. This category includes the preliminary alignment and layout of major roadways as described in Category 4.2.1. The firm must employ a minimum of one professional engineer with three years experience in:

(i) design of major roadways; and

(ii) capacity and level of service analysis.

(C) Category 3.3.1 - route studies & schematic design - complex highways. This category includes the preliminary alignment and layout of complex highways as described in Category 4.3.1. The firm must employ a minimum of one professional engineer with:

(i) five years experience in the area of complex highway design; and

(ii) one year of experience in capacity and level of service analysis.

(D) Category 3.4.1 - minor bridge layouts. This category includes the preliminary alignment and layout of minor bridges as described in Category 5.1.1. The firm must employ a minimum of one professional engineer with three years experience in:

(i) design of minor roadways; and

(ii) capacity and level of service analysis.

(E) Category 3.5.1 - major bridge layouts. This category includes the preliminary alignment and layout of major bridges as described in Category 5.2.1. The firm must employ a minimum of one professional engineer with:

(i) three years experience in design of major roadways; and

(ii) one year of experience in capacity and level of service analysis.

(F) Category 3.6.1 - multi-level interchange and exotic bridge layout. This category includes the preliminary alignment and layout of multi-level interchanges as described in Category 5.3.1 and 5.4.1. The firm must employ a minimum of one professional engineer with:

(i) five years experience in complex highway design; and

(ii) one year of experience in capacity and level of service analysis.

(4) Group 4 - roadway design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 4.1.1 - minor roadway design. This category includes the design of small urban and rural roadways involving repair, resurfacing, and rehabilitation that do not include major reconstruction, and urban and rural roadways that involve substantial capacity improvements through a previously undeveloped area. Associated activities include utility relocation and miscellaneous minor design services. The firm must employ a minimum of one professional engineer with three years of roadway design experience on two projects.

(B) Category 4.2.1 - major roadway design. This category includes design of urban and rural roadways that involve major reconstruction or substantial capacity improvements through a developed area. Associated activities include utility relocation plans, stormwater permits, maintenance of traffic plans, and traffic engineering applications. The firm must employ a minimum of one professional engineer with three years of roadway design experience on two separate projects.

(C) Category 4.3.1 - complex highway design. This category includes the design of expressways, limited access facilities, diamond interchanges, freeways, and new roadway and reconstruction work on complex projects including complex geometrics. Associated activities include substantial drainage evaluation and design features, traffic engineering applications, utility relocation plans, and maintenance of traffic plans. The firm must employ a minimum of one professional engineer with four years experience in complex highway design on two separate projects.

(D) Category 4.4.1 - major freeway interchanges and direct connectors. The firm must employ a minimum of one professional engineer with five years experience in design of a minimum of two separate projects involving major freeway interchanges and direct connectors.

(5) Group 5 - bridge design. The firm must employ sufficient production staff to perform the work described in the following categories.

(A) Category 5.1.1 -minor bridge design. This category includes the design of conventional, non-complex bridges, bridge replacements, simple bridge widening, railroad overpasses, non-standard retaining walls, and pedestrian bridges. The firm must employ a minimum of one professional engineer with a minimum of two years structural bridge design experience.

(B) Category 5.2.1 - major bridge design. This category includes the design of bridges with complex geometry, complexity of design, spans less than 350 feet, non-conventional substructures, substructures requiring ship impact design, design of dolphins for bridge pier protection, railroad underpasses, complex bridge widening, steel truss spans, and concrete arch bridges. The firm must employ a minimum of one professional engineer with a minimum of five years of structural bridge design experience.

(C) Category 5.3.1 - multi-level interchange design. This category includes design of bridges with three levels or more. The firm must employ a minimum of one professional engineer with a minimum of seven years of structural bridge design experience in multi-level interchanges.

(D) Category 5.4.1 - exotic bridge design. This category includes the design of bridges with spans greater than 350 feet, suspension bridges, cable-stayed bridges, precast, post-tensioned segmental bridges, bridges requiring unique analytical methods, and movable bridges. The firm must employ a minimum of one professional engineer with a minimum of seven years of structural bridge design experience in exotic bridge design.

(6) Group 6 - bridge inspection. The firm must employ sufficient National Highway Institute (NHI) trained bridge inspectors and other technical personnel as required to perform inspection of bridges included in this category.

(A) Category 6.1.1 - routine bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for culverts, prestressed beam bridges, cast-in-place concrete bridges, steel girder bridges, steel truss bridges, and timber bridges. The firm must employ:

(i) a minimum of one professional engineer, to serve as project manager, with six years of bridge inspection or design experience appropriate to this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

(ii) a graduate engineer or a professional engineer to serve as the inspection team leader who has a minimum of five years of experience in bridge inspection or design appropriate to this category and has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges" or is currently certified as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (The project manager may serve as inspection team leader, if only one team is required).

(B) Category 6.2.1 - complex bridge inspection. This category includes the inspection of on-system and off-system bridges, inspection and load rating for precast segmental structures, steel arch structures, cable stayed structures, fracture critical inspections, and movable bridges. The firm must employ:

(i) a minimum of one professional engineer, to serve as project manager, with seven years of bridge inspection or design experience, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges;" and

(ii) a graduate engineer or a professional engineer to serve as the inspection team leader who has a minimum of six

years of experience in bridge inspection or design, including one year of inspection or design of bridges included in this category, and who has completed the comprehensive NHI training course "Safety Inspection of In-service Bridges" or current certification as a Level III or IV Bridge Safety Inspector under the National Society of Professional Engineer's program for National Certification in Engineering Technologies (The project manager may serve as inspection team leader, if only one team is required).

(7) Group 7 - traffic engineering and operations studies.

(A) Category 7.1.1 - traffic engineering studies. This category is defined as the study of the traffic operations of a roadway. Associated activities include preparation of or performance of traffic counts, signal warrants, collision diagrams, travel time and delay, capacity and level of service analysis, intersection analysis, signing, and pavement marking. The firm must employ a minimum of one professional engineer with demonstrated experience performing traffic engineering studies.

(B) Category 7.2.1 - highway-rail grade crossing studies. This category includes the study of the operations of highway-rail grade crossings. Associated activities include preparation of or performance of corridor analysis, diagnostic inspections to determine appropriate type and location of active warning devices, advance warning signs and pavement markings, and other geometric or operational improvements. The firm must employ a minimum of one professional engineer with demonstrated experience performing highway-rail grade crossing studies.

(C) Category 7.3.1 - traffic signal timing. This category includes analysis, development, and implementation of timing for traffic signals. Associated activities include data collection, intersection analysis, computerized timing programs (development of phase intervals and sequence), and timing implementation. A firm must employ:

(i) a minimum of one professional engineer with demonstrated experience in traffic signal timing and the application and interpretation of traffic flow and signal timing models; and

(ii) sufficient personnel with experience using traffic engineering software applications, loading timings into field equipment, and loading databases into central computers for retiming.

(D) Category 7.4.1 - traffic control systems analysis, design and implementation. This category includes the use of electrical engineering, electronics engineering, computer science and traffic engineering to analyze, design, and implement real-time traffic control systems. The firm must employ:

(i) a minimum of one professional engineer with experience in activities associated with traffic control systems; and

(ii) sufficient production staff to perform these activities.

(E) Category 7.5.1 - Intelligent Transportation System. This category includes conducting ITS planning studies. Associated activities include the study of transportation systems, identification of ITS applications to mitigate transportation problems, development of short term and long term ITS implementation plans, and assessment of the impact of ITS projects on the transportation system. The firm must employ:

(i) a minimum of one professional engineer with a background in transportation engineering and experience in activities associated with the development of ITS; and

(ii) sufficient production staff to perform these activities.

(8) Group 8 - traffic operations design.

(A) Category 8.1.1 - signing, pavement marking and channelization. This category includes the design and preparation of plans for signing, pavement marking, and channelization. The firm must employ a minimum of one professional engineer with two years experience in this category.

(B) Category 8.2.1 - illumination. This category includes the design and preparation of plans for continuous roadway lighting, safety lighting, underpass lighting, tunnel lighting, and high mast lighting. The firm must employ a minimum of one professional engineer:

(i) with two years experience in design and production of illumination plans meeting IESNA and AASHTO guidelines; and

(ii) demonstrated experience in electrical engineering >(National Electric Code).

(C) Category 8.3.1 - signalization. This category includes the design and preparation of plans for traffic signalization. The firm must employ a minimum of one professional engineer with two years experience in the design and production of traffic signalization.

(D) Category 8.4.1 - ITS control systems analysis, design, and implementation. This category of work includes the use of transportation engineering, electronics engineering, and computer science to analyze, design and implement transportation control systems. Associated activities include system performance and cost analysis, system hardware and software design, communication system design, development of management plans, supervision of system installation and operation, system testing and debugging, preparation of system documentation, and the training of operations personnel. The firm must employ:

(i) a minimum of one professional engineer, with a background in electrical engineering, system engineering, or software engineering, with two years experience in either the design and production of ITS plans or the operation of ITS; and

(ii) sufficient personnel with experience in systems engineering, communications, system integration, or software development for ITS applications and ITS equipment.

(E) Category 8.5.1 - highway-rail grade crossings. This category includes the design and preparation of plans for active warning devices, advance warning signs, pavement markings, and other geometric or operational improvements at highway-rail crossings. The firm must employ a minimum of one professional engineer with two years experience in this category.

(9) Group 9 - Bicycle and pedestrian facilities. Category 9.1.1 - bicycle and pedestrian facility development includes the design of bicycle and pedestrian facilities. The firm must employ:

(A) a minimum of one professional engineer with one year of experience in the design of bicycle and pedestrian facilities, and with knowledge of drainage design; and

(B) sufficient production staff to perform these activities.

(10) Group 10 - hydraulic design and analysis.

(A) Category 10.1.1 - hydrologic studies. This category includes rainfall, runoff determination, reservoir routing, and channel routing. The firm must employ a minimum of one professional engineer with:

(i) four years experience; and >(ii)a minimum of two years as a professional engineer in analysis of complex watersheds.

(B) Category 10.2.1 - basic hydraulic design. This category includes storm drain systems, culverts, sedimentation filtration systems, and detention/retention ponds. The firm must employ a minimum of one professional engineer with:

(i) four years experience; and

(ii) a minimum of two years as a professional engineer in hydrologic analysis, hydraulic design, and storm water quality evaluation.

(C) Category 10.3.1 - complex hydraulic design. This category includes hydraulic design of bridges over waterways, flood plain analysis, and channel modifications. The firm must employ a minimum of one professional engineer with:

(i) four years experience; and

(ii) a minimum of two years as a professional engineer in river geomorphology, sediment transport and scour analysis, flood plain analysis, river training techniques, and federal and state regulations and permit compliance.

(D) Category 10.4.1 - pump stations. This category includes the design of pump stations for conveyance of storm waters. The firm must employ:

(i) a minimum of one professional engineer with a total of four years experience and with a minimum of two years as a professional engineer in hydrologic analysis and storm drain and pump station design;

(ii) a minimum of one professional engineer with proficiency in electrical engineering and with a minimum of two years experience in pump system switching and pump configurations; and

(iii) sufficient support staff for producing electrical and structural details.

(E) Category 10.5.1 - bridge scour evaluations and analysis. This category includes hydrologic analysis, channel and bridge hydraulic analysis and sediment transport modeling for evaluating the potential for scour of bridges. The firm must employ a minimum of one professional engineer with:

(i) four years experience; and

(ii) a minimum of two years as a professional engineer in river geomorphology, sediment transport and scour analysis, and flood plain analysis.

(11) Group 11 - construction management. The firm must employ sufficient technical personnel with construction engineering inspection experience to staff projects under this category of work.

(A) Category 11.1.1 - roadway construction management and inspection. This category includes the performance of construction management duties for all categories of roadways and highways, and minor bridges as described in Category 5.1.1. The firm must employ a minimum of one professional engineer with a minimum of two years of responsible charge experience as a project engineer on roadway and bridge construction projects.

(B) Category 11.2.1 - major bridge construction, management, and inspection. This category includes the performance of construction management duties for major bridges, multi-level interchanges, and exotic bridges as described in Category 5.2.1. The firm must employ one professional engineer with a minimum of two years demonstrated major bridge construction experience.

(12) Group 12 - materials inspection and testing.

(A) Category 12.1.0 - material testing. The firm must have available in-house equipment and employ qualified, certified staff necessary to perform the work specified in this category.

(i) Category 12.1.1 - asphaltic concrete. This category includes testing of asphaltic concrete material. The firm must employ a minimum of one professional engineer with three years of experience in testing roadway construction materials and a minimum of one person with the proper Hot Mix Asphalt Specialist Certification.

(ii) Category 12.1.2 - portland cement concrete. This category includes testing of portland cement concrete. The firm must employ a minimum of one professional engineer with three years of experience in testing roadway and bridge construction materials, and a minimum of one person with the proper concrete certification.

(B) Category 12.2.1 - plant inspection and testing. This category includes inspection of the following types of facilities and inspection of materials and finished products within these facilities: fabrication plants, mines and quarries, mills, refineries, processors, and producers. The firm must employ:

(i) a minimum of one professional engineer with three years of responsible experience in inspection and testing bridge and roadway construction materials; and

(ii) sufficient technical personnel with construction engineering experience to properly staff this type of work.

(13) Group 13 - construction inspector services. Category 13.1.1 - roadway and bridge construction inspection includes the inspection of roadway and bridge materials and construction procedures. The firm must employ:

(A) a minimum of one qualified inspector with a minimum of five years experience on roadway, bridge, or related construction projects; and

(B) sufficient technical personnel with construction inspection experience to perform the work under this category.

(14) Group 14 - geotechnical services.

(A) Category 14.1.1 - soil exploration. This category includes acquisition and reporting of subsurface material to be used for the planning, design, construction, and performance of

transportation facilities. The field classification of materials and acquisition of soil and rock samples is also included. The firm must:

(i) employ a minimum of one professional engineer with demonstrated experience in the activities normally associated with the category under consideration; and

(ii) have available the equipment necessary to perform the work.

(B) Category 14.2.1 - geotechnical testing. This category includes sampling and conducting tests on soil and rock according to the department's approved procedures for the purpose of classifying materials and/or identifying their physical properties. The firm must:

(i) employ a minimum of one professional engineer with demonstrated experience in the activities normally associated with the category under consideration; and

(ii) have available in-house equipment and employ qualified staff necessary to perform the work.

(C) Category 14.3.1 - transportation foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for bridges, retaining walls, signs, and other types of transportation foundations. Working with bearing capacity, predicted settlement, stabilization, and construction on soft ground will be required. The firm must employ a minimum of one professional engineer with demonstrated experience in the activities normally associated with this category.

(D) Category 14.4.1 - building foundation studies. This category includes producing reports which contain selection of the type and depth of foundation for buildings. Working with bearing capacity, predicted settlement, stabilization and construction on soft ground will be required. The firm must employ a minimum of one professional engineer with demonstrated experience in the activities normally associated with this category.

(15) Group 15 - surveying and mapping.

(A) Category 15.1.0 - right of way surveys. This category includes the performance of on the ground surveys and preparation of parcel maps, legal descriptions, and right of way maps. The firm must employ a minimum of one registered professional land surveyor and two technical personnel, all with demonstrated experience in the applicable category of work and the following subcategories:

(i) Category 15.1.1 - survey;

(ii) Category 15.1.2 - parcel maps;

(iii) Category 15.1.3 - legal descriptions; and

(iv) Category 15.1.4 - right of way maps;

(B) Category 15.2.1 - design survey. This category includes performance of surveys associated with the layout and staking of projects for construction. The firm must:

(i) employ a minimum of one registered professional land surveyor with a minimum of one year experience in roadway construction staking;

(ii) employ sufficient staff to undertake the requirements normally associated with this type of work; and

(iii) have available the proper equipment to perform the work.

(C) Category 15.3.1 - aerial mapping. This category involves the collection and reduction of aerial survey data, and preparation of site maps and topographic maps. Associated activities include category 15.4.1. The firm must:

(i) employ sufficient lead technical personnel with a minimum of five years of experience each in aerial mapping;

(ii) have available the proper equipment meeting national mapping standards and other equipment required to perform the work; and

(iii) employ sufficient technical production staff to perform this type of work.

(D) Category 15.4.1 - horizontal and vertical control for aerial mapping. This category involves the establishment of the horizontal and vertical control for aerial mapping. The firm must:

(i) employ a minimum of one registered professional land surveyor;

(ii) have available the proper equipment to perform the work; and

(iii) employ sufficient staff to undertake the requirements normally associated with this type of work.

(16) Group 16 - architecture. The firm must employ sufficient project management and technical staff to provide services normally associated with this type of work.

(A) Category 16.1.1 - architecture - buildings. This category includes architectural services for buildings. The firm must employ a minimum of one registered architect with two years experience in the areas identified.

(B) Category 16.1.2 - architecture - other structures. This category includes architectural services for structures other than buildings. The firm must employ a minimum of one registered architect with two years experience in the areas identified.

(17) Group 17 - landscape architecture. The firm must employ sufficient production staff to perform this type of work.

(A) Category 17.1.1 - functional and aesthetically pleasing outdoor spaces. This category includes the planning and layout of spaces including plazas, entry-ways, bicycle and pedestrian facilities and systems. The firm must employ a minimum of one registered landscape architect with one year of experience in landscape design and plan production and design normally associated with this category.

(B) Category 17.2.1 - planting and irrigation. This category includes the design of vegetative planting areas and irrigation systems. The firm must employ a minimum of one registered landscape architect with one year of experience in landscape design and plan production and design normally associated with this category.

(18) Group 18 - miscellaneous. Category 18.1.1 - value engineering. This category includes the study of transportation related projects or selected processes by multidisciplined teams to determine the most cost effective use of resources to accomplish the given functions. The firm must employ:

(A) a minimum of one professional engineer who:

(i) is a certified value specialist with experience in the value engineering process and team leadership related to transportation projects as evidenced by having conducted at least five transportation related value engineering studies, including one freeway project exceeding $20 million initial estimated cost;

(ii) has taught two transportation related value engineering classes in the last five years; and

(iii) has knowledge of and experience with federal, state, and local regulations, public involvement, professional engineering standards, project management, and cost estimating related to transportation projects; and

(C) sufficient production staff to perform transportation related value engineering team leadership, produce final value engineering study reports, and teach classes on the principles and practices of value engineering.

Issued in Austin, Texas, on September 30, 1996.

TRD-9614220
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: November 11, 1996
For further information, please call: (512) 463-8630

43 TAC §§9.33-9.37, 9.39

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

The repeals 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; Government Code, Chapter 2254, Subchapter A, the Professional Services Procurement Act, which sets forth requirements for selection and contracting of architectural and engineering services; Government Code, Chapter 2161, which provides for a HUB Program for contracts that are funded in whole by state funds; and Transportation Code, §201.702, which provides for a DBE Program.

No other statutes, articles, or codes are affected by the proposed amendments, repeal, and new sections.

§9.33. Request for Proposals and Preproposal Meetings.

§9.34. Proposals.

§9.35. Proposal Evaluation.

§9.36. Interview.

§9.37. Selection.

§9.39. Emergency Selection.

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

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Bob Jackson
Deputy General Counsel
Texas Department of Transportation
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For further information, please call: (512) 463-8630

Chapter 17. Vehicle Titles and Registration

Subchapter A. Motor Vehicle Certificates of Title

43 TAC §17.9

The Texas Department of Transportation proposes new §17.9, concerning restitution liens on motor vehicles.

Code of Criminal Procedure, Article 42.21, was added by the enactment of Senate Bill 494, 74th Texas Legislature, 1995. Article 42.21, provides that a victim or an attorney for the state may file a restitution lien on motor vehicles owned by a criminal defendant in order to secure payment of restitution, fines, or costs ordered by the court.

Sectin 17.9, establishes that the purpose of the section is to provide procedures for a person to file a restitution lien on a motor vehicle, defines words and terms, identifies the persons who may file a restitution lien, establishes that in order to file a restitution lien the person must submit a $5.00 fee and an affidavit, and describes the minimum information the affidavit must contain.

The section also provides the department procedures for establishing an alphabetical index containing the name of the person entitled to restitution, the name of the defendant, the amount of the lien, and the date and time the lien was received; and requires the department to place a restitution lien notation on the records of motor vehicles described in the affidavit and maintain a copy of the affidavit and the court order. The section provides that a person may file another affidavit accompanied by a $5.00 fee to place restitution liens on after-acquired vehicles, requires that a restitution lien expires after ten years or when the judgment is satisfied, provides that a lien may be refiled before the date the lien expires, and provides that the department will remove any notations from the vehicles when a release of the lien is executed or the lien expires.

Frank J. Smith, Director, Budget and Finance, has determined that for the first five years the new section is in effect, there will be fiscal implications to the state as a result of enforcing or administering this section. The anticipated estimated increase in cost to the state is $286,540 per year for Fiscal Year 1997 and $283,727 for Fiscal Years 1998-2001. The estimated increase in revenue is $195,420 for Fiscal Years 1997-2001. There are no anticipated fiscal implications to local governments as a result of administering or enforcing the section. There will be a $5.00 cost per lien to the individuals filing the restitution liens.

Jerry Dike, Director, Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the proposed amendments.

Mr. Dike also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of administering the section will be the ability of a victim or an attorney for the state to file restitution liens on motor vehicles owned by defendants. There will be no effect on small businesses.

Pursuant to the Administrative Procedure Act, the Government Code, Chapter 2001, the Texas Department of Transportation will conduct a public hearing to receive comments concerning the new section. The public hearing will be held at 9:00 a.m. on Tuesday, October 22, 1996, in the first floor hearing room of the Dewitt C. Greer State Highway Building, 125 East 11th Street, Austin, Texas, and will be conducted in accordance with the procedures specified in 43 TAC §1.5. Those desiring to make comments or presentations may register starting at 8:30 a.m. Any interested person may appear and offer comments, either orally or in writing, however, questioning of those making presentations will be reserved exclusively to the presiding officer as may be necessary to ensure a complete record. While any person with pertinent comments will be granted an opportunity to present them during the course of the hearing, the presiding officer reserves the right to restrict testimony in terms of time and repetitive content. Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. Persons with disabilities who plan to attend this meeting and who may need auxiliary aids or services, such as interpreters for persons who are deaf or hearing impaired, readers, large print or braille, are requested to contact Eloise Lundgren, Director of the Public Information Office, at 125 East 11th Street, Austin, Texas 78701-2382, (512) 463-8588 at least two working days prior to the meeting so that appropriate arrangements can be made.

Comments on the proposal may be submitted to Jerry L. Dike, Director, Vehicle Titles and Registration Division, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701. The deadline for receipt of written comments will be 5:00 p.m. on November 1, 1996.

The new section is 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 other statutes, articles, or codes are affected by this proposed new section.

§17.9. Restitution Liens.

(a) Purpose. Pursuant to Criminal Procedure Code, Article 42.21, a victim or an attorney for the state may file a lien on any interest in a motor vehicle of a person convicted of a criminal offense to secure payment of restitution or fines or costs. This section establishes the procedures to perfect the filing and the removal of the lien on any interest in a motor vehicle whether then owned or after-acquired.

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

(1) Department - The Texas Department of Transportation.

(2) Division director - The director of the department's Vehicle Titles and Registration Division.

(3) Restitution lien - A lien placed against a defendant's motor vehicle in order to recoup a judgment or a fine or costs.

(4) State - The State of Texas and all its political subdivisions.

(5) Victim - A close relative of a deceased victim, guardian of a victim, or victim, as those terms are defined by the Code of Criminal Procedure, Article 56.01.

(c) Persons who may file a restitution lien. The following persons may file a restitution lien:

(1) a victim of a criminal offense to secure the amount of restitution to which the victim is entitled under the order of a court in a criminal case; and

(2) an attorney of the state to secure the amount of fines or costs entered against a defendant in a judgment in a felony case.

(d) Perfection of a restitution lien. The victim or the attorney representing the state must submit an affidavit and a $5.00 fee to the department to perfect a restitution lien against the defendant's motor vehicle. The affidavit shall be in a form prescribed by the division director and at a minimum must include:

(1) the name and birth date of the defendant whose interest in a motor vehicle is subject to the lien;

(2) the residence or principal place of business of the person named in the lien, if known;

(3) the criminal proceeding giving rise to the lien, including the name of the court, the name of the case, and the court's file number for the case;

(4) the name and address of the attorney representing the state and the name and address of the person entitled to restitution;

(5) a statement that the notice is being filed pursuant to Code of Criminal Procedure, Article 42.21;

(6) the amount of restitution, fines, and costs the defendant has been ordered to pay by the court;

(7) a statement that the amount of restitution owed at any one time may be less than the original balance and that the outstanding balance is reflected in the records of the clerk of the court;

(8) the vehicle description (year, make, and vehicle identification number) of each motor vehicle on which the restitution lien notation will be recorded; and

(9) the signature of the attorney representing the state or a magistrate.

(e) Recording a restitution lien.

(1) Upon receipt of the affidavit and $5.00 filing fee, the department will establish an alphabetical index in which the lien is filed showing:

(A) the name of the person entitled to restitution;

(B) the name of the defendant obligated to pay restitution, fines, or costs;

(C) the amount of the lien;

(D) the name of the court that ordered restitution; and

(E) the date and hour the lien is received.

(2) The department will place a restitution lien notation on the records of motor vehicles described in the affidavit.

(3) The affidavit and copy of the court order will be maintained by the department.

(f) Filing additional liens. The victim or attorney for the state may file another affidavit accompanied by a $5.00 fee with the department to place restitution liens on any additional vehicles acquired by the defendant until such time that the judgment is satisfied.

(g) Expiration of restitution liens. A restitution lien will expire on the tenth anniversary of the date the lien was filed or on the date the defendant satisfies the judgment creating the lien, whichever occurs first.

(h) Refiling restitution liens. A lien may be refiled before the date the lien expires under subsection (g) of this section.

(i) Removal of restitution lien notations. The department will remove any notations from the defendant's motor vehicles, when the person filing the lien or the clerk of the court executes a release of the lien or the lien expires.

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

Issued in Austin, Texas, on September 30, 1996.

TRD-9614218

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Earliest possible date of adoption: November 11, 1996

For further information, please call: (512) 463-8630

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