TEXAS REGISTER

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William Riley
4th Grade

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

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

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IN THIS ISSUE

ADOPTED RULES

IN ADDITION

Texas Department of Transportation

Open Meetings

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

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

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

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

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

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for November 19, 2003

Appointed to the University of Texas System Board of Regents for a term to expire February 1, 2009, John W. Barnhill, Jr. of Brenham (replacing Dub Riter of Tyler who is deceased).

Appointed to the Texas Tech University Board of Regents for a term to expire January 31, 2007, Lawrence Frederick Francis of El Paso (replacing J. Robert Brown of El Paso who resigned).

Appointed to the Texas Tech University Board of Regents for a term to expire January 31, 2009, J. Frank Miller, III of Dallas (replacing John Jones of Brady whose term expired).

Appointments for November 24, 2003

Appointed to the Jefferson & Orange County Pilot Commission, pursuant to HB 3366, 78th Legislature, Regular Session, for a term to expire August 22, 2004, Kevin Michael Williams of Orange.

Appointed to the Jefferson & Orange County Pilot Commission, pursuant to HB 3366, 78th Legislature, Regular Session, for a term to expire August 22, 2004, Morris Carter, Jr. of Port Arthur.

Appointed to the Jefferson & Orange County Pilot Commission, pursuant to HB 3366, 78th Legislature, Regular Session, for a term to expire August 22, 2005, George W. Brown, III of Beaumont.

Appointed to the Jefferson & Orange County Pilot Commission, pursuant to HB 3366, 78th Legislature, Regular Session, for a term to expire August 22, 2005, Andrew W. Dunn of Orange.

Appointed to the Jefferson & Orange County Pilot Commission, pursuant to HB 3366, 78th Legislature, Regular Session, for a term to expire August 22, 2005, William F. Scott of Nederland.

Appointed to the Texas Board of Licensure for Professional Medical Physicists for a term to expire February 1, 2009, Dr. Walter Grant, III of Bellaire (replacing Louis Levy of Austin whose term expired).

Designating Philip D. Bourland, Ph.D. of Temple as Presiding Officer of the Texas Board of Licensure for Professional Medical Physicists for a term at the pleasure of the Governor. Dr. Bourland will replace Louis Levy of Austin as Presiding Officer.

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2009, Linda Bell Robinson of Houston (pursuant to SB 287, 78th Legislature Regular Session).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2009, Maria T. Molett of Garland (Ms. Molett is being reappointed).

Appointed to the Council on Sex Offender Treatment for a term to expire February 1, 2009, Frederick Liles Arnold of Plano (Mr. Arnold is being reappointed).

Appointed to the Health Disparities Task Force for a term to expire February 1, 2005, Martha A. Hargraves, Ph.D. of Houston (Dr. Hargraves is being reappointed).

Appointed as Justice, Second Appellate District, Place 4, for a term until the next General Election and until his successor shall be duly elected and qualified, John Robert McCoy of Fort Worth. Judge McCoy is replacing Justice Sam Day who retired.

Appointed Justice, Supreme Court of Texas, Place 9, for a term until the next General Election and until his successor shall be duly elected and qualified, Scott Andrew Brister of Cypress. Justice Brister is replacing Justice Craig Enoch who resigned.

Designating Patrick Cordero of Midland as Presiding Officer of the Texas Residential Construction Commission for a term at the pleasure of the Governor. Mr. Cordero is being named presiding officer pursuant to HB 730, 78th Legislature, Regular Session.

Rick Perry, Governor

TRD-200308154

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Executive Order

RP 29

Relating to the creation of the Texas Energy Planning Council

WHEREAS, President George W. Bush has prudently urged adoption of a national energy plan which is important to national energy and economic security; and

WHEREAS, the United States currently imports over 50 percent of the oil we consume and our reliance on foreign sources of oil continues to grow, thus jeopardizing our energy security; and

WHEREAS, state and national trends suggest increasing energy consumption and decreasing domestic production of oil and natural gas; and

WHEREAS, in Texas, we continue to face declining oil and gas production from our peak production period in the early 1970s; and

WHEREAS, Texas still ranks number one among the states in terms of oil and gas production, supplying approximately 20 percent of the nation's domestic oil and 26 percent of the nation's domestic marketed natural gas; and

WHEREAS, our Texas energy industry helps to power a nation, creates jobs and opportunity for Texas families, and provides needed revenues for our Texas economy; and

WHEREAS, it is crucial that we initiate a comprehensive and coordinated effort to ensure our state's future energy security;

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

1. Creation. A Texas Energy Planning Council (the "Council") is hereby created to advise the Governor on a balanced plan to provide the energy needed to fuel Texas' future economic growth and prosperity. The plan should identify gaps between the state's energy supply and

energy demand and recommend plans to close or minimize these gaps. The plan should recognize the important contribution of Texas' petroleum and natural gas exploration and production industry and identify ways to keep this industry strong and vibrant as the state begins to transition to the next generation of energy technologies. The Council should explore ways to diversify future energy supplies via liquefied natural gas, nuclear, and clean coal technology as well as through renewable energy sources such as wind power, biomass, and fuel cells. The Council should also explore common sense ways to reduce energy consumption through practical energy conservation measures.

2. Composition and Terms. The Council shall consist of members appointed by the Governor. The Chairman of the Railroad Commission of Texas shall serve as chair of the Council and have all the authority invested in the chairmanship, including but not limited to calling meetings, setting the agenda, determining witnesses and experts to assist the chairman, and the ability to call on other state officials to assist with the work of the Council. The Governor may fill any vacancy that may occur and may appoint other voting or ex officio, non-voting members as needed. All appointees serve at the pleasure of the Governor.

3. Report. The Council shall submit a full report, including findings and recommendations, to the Governor, Lieutenant Governor, and Speaker of the House of Representatives, no later than December 31, 2004. The Council shall be dissolved upon completion of that report.

4. Meetings. The Council shall meet at times and locations as determined by the chair.

5. Administrative Support. The Railroad Commission of Texas and other appropriate state agencies shall provide administrative support for the Council.

6. Other Provisions. The Council shall adhere to guidelines and procedures prescribed by the Office of the Governor. All Council members shall serve without compensation or reimbursement for travel expenses.

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

This executive order supersedes all previous orders inconsistent with its terms and shall remain in effect and in full force until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the 10th day of November, 2003.

Rick Perry, Governor

TRD-200308008

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THE ATTORNEY GENERAL

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

Opinion

Opinion No. GA-0125

The Honorable Florence Shapiro

Chair, Education Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Whether a minor may be classified as a "missing child" under article 63.001, Code of Criminal Procedure, if the minor's legal custodian knows the minor's whereabouts (RQ-0057-GA)

S U M M A R Y

While a child under 17 who is voluntarily absent from home without the consent of his or her parent or guardian "for a substantial length of time or without intent to return" may be taken into custody by a law enforcement officer pursuant to Family Code provisions, a seventeen-year-old who engages in the same conduct may not be.

A child, including an unemancipated seventeen-year-old, who voluntarily leaves the care and control of his or her legal custodian without the custodian's consent and without intent to return is not a "missing child" under Code of Criminal Procedure chapter 63 if the custodian knows where the child is located. If the custodian determines the child's location after filing a missing child report and notifies the investigating law enforcement agency, the agency has no duty to continue the investigation or to take possession of the child and return him or her to the custodian.

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308162
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 26, 2003

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Request for Opinions

RQ-0127-GA

Requestor:

Mr. Mac Tristan, Chairman

Texas Automobile Theft Prevention Authority

4000 Jackson Avenue

Austin, Texas 78731

Re: Whether the Texas Automobile Theft Prevention Authority may use its funds to investigate the theft of heavy equipment, including self-propelled farm equipment, construction equipment, boats and aircraft (Request No. 0127-GA)

Briefs requested by December 21, 2003

RQ-0128-GA

Requestor:

The Honorable Paul Scott

Baylor County Attorney Pro Tem

1724 Pease Street

P.O. Box 1484

Vernon, Texas 76385

Re: Whether an attorney is disqualified from acting as criminal defense counsel after appointment as county attorney pro tem in another county (Request No. 0128-GA)

Briefs requested by December 21, 2003

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308112
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 24, 2003

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Request for Opinions

RQ-0129-GA

Requestor:

The Honorable Florence Shapiro

Chair, Education Committee

Texas State Senate

P.O. Box 12068

Austin, Texas 78711

Re: Validity of a local ordinance that allows a nonconforming sign to be replaced with a new nonconforming sign (Request No. 0129-GA)

Briefs requested by December 30, 2003

RQ-0130-GA

Requestor:

Mr. Robert L. Cook

Executive Director

Texas Parks and Wildlife Department

4200 Smith School Road

Austin, Texas 78744-3291

Re: Whether a licensed crab fisherman must obtain permission from the owner of submerged land in order to place crab traps at that location (Request No. 0130-GA)

Briefs requested by December 30, 2003

RQ-0131-GA

Requestor:

Mr. Robert L. Cook

Executive Director

Texas Parks and Wildlife Department

4200 Smith School Road

Austin, Texas 78744-3291

Re: Authority of the Parks and Wildlife Department to grant an interest in a tract of real property for the purpose of promoting park or beach access or access to a private residence (Request No. 0131-GA)

Briefs requested by December 30, 2003

For further information, please access the website at www.oag.state.tx.us. or call the Opinion Committee at 512/463-2110.

TRD-200308151
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: November 25, 2003

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PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. [~~Square brackets and strikethrough~~] indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 1. ADMINISTRATION

PART 1. OFFICE OF THE GOVERNOR

CHAPTER 5. BUDGET AND PLANNING OFFICE

SUBCHAPTER A. FEDERAL AND INTERGOVERNMENTAL COORDINATION

DIVISION 4. UNIFORM GRANT AND CONTRACT MANAGEMENT STANDARDS

1 TAC §5.141, §5.144

The Office of the Governor proposes amendments to 1 TAC §5.141 and §5.144 of the Uniform Grant Management Standards.

These proposed changes correct typographical errors and clarify certain provisions in the cost principles adopted by reference from OMB Circular A-87, the grant administration requirements adopted by reference from the Common Rule of OMB Circular A-102 and single audit requirements adopted by reference from OMB Circular A-133. The proposed changes also make substantive changes to selected provisions of the state single audit circular.

Denise Francis, the State Single Point of Contact in the Governor's Budget and Planning Office, has determined that for each year of the first five years the amendments are in effect there should be savings for state awarding agencies, units of local government and other grantees as a result of raising the threshold for audits requirements from $300,000 to $500,000 and improved compliance due to clearer provisions and definitions. Due to variations in grant amounts and differences in the complexities of individual audits, the magnitude of savings cannot be estimated.

Ms. Francis has also determined that for each year of the first five years the amendments as proposed are in effect, the public is expected to benefit as a result of increased efficiency and effectiveness in accountability of public expenditures, decreased disruption of auditee operations, and operational efficiency through the use of consistent procedures and definitions. There will be no additional economic cost to individuals who are required to comply with the amendments as proposed. There may be decreased revenues for audit firms resulting from the increased audit threshold. There are no expected effects on other small business, as such entities are not normally grant recipients and the rules do not address for-profit enterprises.

Comments on the proposal may be submitted in writing to Denise Francis, Governor's Budget/Planning and Policy Office, P.O. Box 12428, Austin, Texas 78711 or may be sent by e-mail to dfrancis@governor.state.tx.us. A printed copy of the proposal may be reviewed at the Governor's Office of Budget/Planning and Policy, State Insurance Building, Room 4.4.4, 1100 San Jacinto, Austin, Texas.

The amendments are proposed under Chapter 783, Texas Government Code, which directs the Governor's office to develop uniform grant and contract management standards to promote the efficient use of public funds.

The Government Code, §783.006, is affected by the proposed amendments.

§5.141. Introduction.

The Governor's Office of Budget and Planning adopts amendments to §5.141 and §5.144 to the Uniform Grant Management Standards adopted effective February 12, 1998 (23 TexReg 953). These rules modify the rules adopted in February 1998 to clarify provisions in the cost principles adopted by reference from OMB Circular A-87 and audit requirements adopted by reference from OMB Circular A-133 in the state single audit circular. To reduce confusion as to the applicability of the standards, they have been renamed "The Uniform Grant Management Standards" (UGMS). The Uniform Grant Management Standards were developed under the authority of Chapter 783 of the Texas Government Code, which codifies the Uniform Grant and Contract Management Standards Act of 1981. The federal circulars have been renamed and extensively modified to reflect state law, policies and practice. Pursuant to the Act and Chapter 2105, Texas Government Code, the prescribed standard financial management conditions and uniform assurances are applicable to all grants and grant agreements executed between state agencies, local governments and other affected entities, as described in §5.142(b) of this title (relating to Purpose, Applicability, and Scope).

§5.144. Adoption by Reference

As directed by the Act, the Governor's Office of Budget and Planning adopts by reference Office of Management and Budget Circular A-87, as annotated and revised; the Common Rule of OMB Circular A-102, as annotated and revised; and OMB Circular A-133, as annotated and revised. These circulars have been renamed, respectively, "Cost Principles for State and Local Governments and Other Affected Entities", "State Uniform Administrative Requirements for Grants and Cooperative Agreements", and "State of Texas Single Audit Circular". These circulars, adopted effective February 12, 1998, have been further annotated and revised for clarity and to reduce audit costs.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308014
Royce Poinsett
Assistant General Counsel
Office of the Governor
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 463-1936

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 114. PAYMENT FOR GOODS AND SERVICES

1 TAC §§114.1, 114.5, 114.7, 114.9, 114.10

The Texas Building and Procurement Commission proposes adoption of amendments to Title 1, Texas Administrative Code, Chapter 114, Subchapter A, §§114.1. 114.5, 114.7, 114.9, and 114.10 concerning payment for goods and services. The amendments will revise the current rules to bring the rules into alignment with statutory requirements and to replace outdated language.

Rule 114.1 is amended to replace references to the General Services Commission with the Texas Building and Procurement Commission and to bring consistency to the capitalization of the first word in subsections, paragraphs, and subparagraphs.

Rule 114.5 is amended to make a grammatical change and to delete a reference to another agency.

Rule 114.7 is amended to delete references to statutes in effect through September 1, 1999.

Rule 114.9 is amended to reflect amendments to § 114.7 (b), (c) and (d) under this rule review relating to disputed payments.

Rule 114.10 is amended to reflect the current email address of the Office of Attorney General rules on the Secretary of State's website and to consolidate (c) into (b).

Luis Arellano, Chief Fiscal Officer, has determined for the first five year period that the rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing the rules.

Mr. Arellano has also determined that for each year of the first five year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarity and consistency. There will be no cost to small, large or micro-businesses or persons as a result of enforcing the rules and there is no impact on local employment.

Comments on the proposed review may be submitted in writing to Cynthia de Roch, General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may be sent via email to travis.langdon@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within thirty (30) days of the publication date.

The amendments are proposed under the authority of the Texas Government Code, §2152.001 & § 2152.003.

The following codes are affected by these rules: Texas Government Code §§2107.002, 2155.381, 2251.002, 2251.003, 2251.021, 2251.025

§114.1. Definitions.

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

(1) Bona-fide Dispute - a difference of opinion held in good faith by a vendor and a governmental entity .

(2) Commission - The Texas Building and Procurement Commission [~~General Services Commission~~].

(3) Disputed Payment - includes, but is not limited to an invoice presented for payment

(A) which [~~Which~~] is not in compliance with the invoicing standards in this chapter;

(B) which is for nonconforming goods and services under the related purchase order or contract; or

(C) which is not presented in the time frame authorized by the related purchase order or contract.

(4) Invoice - a document presented by a vendor for payment, which includes information necessary for payment processing, and is received by mail, electronically or by facsimile transmission.

§114.5. Invoicing Standards.

(a) To receive payment, vendors must submit an invoice to the state agency receiving the goods or services. The invoice should include, but is not limited to including:

(1) the vendor's mailing and e-mail (if applicable) address;

(2) the vendor's telephone number;

(3) the name and telephone number of a person designated by the vendor to answer questions regarding the invoice;

(4) the state agency requisition number;

(5) the state agency's name, agency number, and delivery address;

(6) the commission's purchase order number, if applicable;

(7) the contract number or other reference number, if applicable;

(8) a valid Texas identification number (TIN) issued by the Comptroller of Public Accounts;

(9) a description of the goods or services, in sufficient detail to identify the order which relates to the invoice;

(10) unit numbers corresponding to the original order; and

(11) other relevant information supporting and explaining the payment requested or identifying a successor organization to an original vendor, if necessary.

(b) When a correct and complete invoice is received, the agency shall date stamp the document and submit it for payment as prescribed by that state comptroller's office and in accordance with the Uniform Statewide Accounting System (USAS) User Manual, certifying that the goods or services were received in accordance with the purchase order and that the invoice is correct and properly payable. Incorrect or incomplete invoices should be immediately returned to the vendor.

(c) When satisfied that the payment is correct, the commission will approve for payment those vouchers for which pre-payment auditing is required on the USAS system.

(d) Partial payments may be made for partial shipments.

(e) Invoices, vouchers, and payments subject to pre-payment audit by the commission will be processed according to the following schedule:

(1) the originating agency must transmit electronically the voucher to the comptroller no later than 8 calendar days after the later of:

(A) the date the agency received the invoice from the vendor;

(B) the date the agency received the supplies, material, or equipment; or

(C) the date on which the performance of services was completed.

(2) In accordance with the Government Code, §2155.324, the commission must electronically approve the voucher on pre-audit purchase [~~purchases~~] categories exceeding $25,000 for service contracts, emergency purchases, research purchases and all lease payments on the USAS system no later than the eight calendar day after receipt of the invoice and purchase information from the originating agency.

[~~(3) The state comptroller must submit the payment to the originating agency or mail the payment to the vendor (or electronically transmit the payment to the vendor's financial institution) no more than 8 calendar days after receipt of the voucher from the commission pursuant to the Government Code, §2155.382.~~]

§114.7. Payments.

(a) A payment is considered completed on the date it is postmarked or on the date it is electronically transmitted to the vendor's financial institution. This date is used to determine a timely payment.

(b) Any payment owed by an agency must be mailed or transmitted electronically to the vendor no later than 30 days after the later of:

(1) the day on which the agency received the goods;

(2) the date the performance of the service under the contract is completed; or

(3) the day on which the agency received the invoice for goods or services.

(c) Overdue payments will accrue interest at the rate of 1.0% per month. If partial payment is timely made, the unpaid balance of a partial payment will accrue interest as provided by this subsection.

[~~(d) Until September 1, 1999, under Acts of the 75th Legislature, ch. 634, §4(a), 1997, codified under the Government Code, §2251.041, a vendor must submit its claim for payment of accrued interest to the originating agency no later than six months after the vendor's receipt of payment. Claims accruing under this version of the statute which are submitted to the originating agency after that time will not be honored. This subsection is subject to subsection (g) of this section.~~]

[~~(e) Until September 1, 1999, under Acts of the 75th Legislature, ch. 634, §4(a), 1997, the originating agency shall process claims for accrued interest by submitting the claim and a properly executed voucher directly to the state comptroller in accordance with rules and procedures adopted by the state comptroller. This subsection is subject to subsection (g) of this section.~~]

(d) [~~(f)~~]The unpaid balance of a partial payment made within the 30 day period provided by this section accrues interest as provided by subsection (c) of this section unless the balance is in dispute.

[~~(g) By Acts of the 75th Legislature, ch. 634, 1997, the Texas Legislature made amendments to the Government Code, Chapter 2251, §2251.026 and §2251.041, which amendments take effect September 1, 1999. Subsections (d) and (e) of this section shall automatically terminate as of that effective date. Thereafter, the Comptroller of Public Accounts has responsibility to administer Government Code, §2251.026. Government Code, §2251.041 is repealed as of that date~~].

§114.9. Disputed Payments.

(a) An agency shall notify a vendor of an error in an invoice submitted for payment by the vendor not later than the 21st day after the date the agency receives the invoice.

(b) If a dispute is resolved in favor of the vendor, the vendor is entitled to receive interest on the unpaid balance of the invoice submitted by the vendor in accordance with §114.7(b) and (c) [~~beginning on the date that the payment for the invoice is overdue.~~]

(c) If a dispute is resolved in favor of the agency, the vendor shall submit a corrected invoice that must be paid in accordance with §114.7 (b) and (c) of this chapter. The unpaid balance accrues interest as provided by §114.7(d) [~~(f)~~] of this chapter if the corrected invoice is not paid by the appropriate date.

§114.10. Collection of Debts.

(a) The Commission adopts by reference the rule of the Office of the Attorney General, Title 1, Part 3, Texas Administrative Code, Chapter 59 relating to Collections. The Office of the Attorney General rules are located at the Office of the Secretary of State's internet website: www.sos.state.tx.us/tac/index.shtml [~~www.sos.state.tx.us/tac/index.html~~].

(b) The rules set forth a process for collection of delinquent obligations owed to the commission in accordance with Texas Government Code, Chapter 2107, §2107.002.

[~~(c) The adoption of this rule is required by the Texas Government Code, Chapter 2107, §2107.002.~~]

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308046
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 463-4257

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION

The Texas Department of Agriculture (the department) proposes amendments to §§17.51, 17.52, 17.54, 17.56, and 17.304, and new §17.59, concerning the department's GO TEXAN membership and GO TEXAN Partner Program rules. The amendments

and new section are proposed to establish a GO TEXAN membership category for nonagricultural products, in accordance with Texas Agriculture Code, §12.0175, as amended by House Bill 1858, 78th Regular Session, 2003 (HB 1858), and to establish additional eligibility criteria for both programs. The proposed amendments to §17.51 provide a definition for "Other Products" and modify the definitions for "Produced in Texas" and "Producer". The amendments to §§17.52, 17.54, and 17.56 clarify that the department, in the evaluation of an applicant or participant in the GO TEXAN membership program may consider whether the applicant or participant, or their products, enhance the integrity, image, or commercial appeal of the program. The proposed amendments to §17.304 provide that as a requirement for participation in the GO TEXAN Partner Program, the applicant must disclose certain criminal history information of any owners having a 10% or more interest in the applicant's business, and provide for the forfeiting of funds awarded to a successful applicant for failure to continue to comply with disclosure of any criminal conviction information required to be reported to the program. Proposed new §17.59 establishes a membership category for non-agricultural products, including eligibility requirements, an application process, and restrictions on use of the GO TEXAN promotional mark.

Delane Caesar, Assistant Commissioner for Marketing and Promotion, has determined that for the first five-year period the proposed amendments and new section are in effect there will be fiscal implications for state government as a result of enforcing or administering the amendments and new section. There will be an increase in revenue due to the collection of membership fees from the new category of members established by new §17.59. It is not possible to estimate the specific increase in revenue, as it is not possible to estimate at this time how many individuals or entities will apply for membership under this new category. There will be no fiscal implications for local government as a result of administering or enforcing the proposed amendments and new section.

Ms. Caesar has also determined that for each year of the first five years the proposed amendments and new section are in effect, the public benefit anticipated as a result of administering and enforcing the amendments and new section will be increased sales and business opportunities for non-agricultural products produced in Texas because of the department's promotional and marketing programs. Amendments, other than those relating to the promotion of non-agricultural products, will ensure that public awareness for the program is enhanced and that efficiencies continue to be incorporated into the program. The cost anticipated to micro-businesses, small businesses or individuals wishing to join the program as a non-agricultural member will be a $25 annual membership fee.

Comments may be submitted to Delane Caesar, Assistant Commissioner for Marketing and Promotion, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

4 TAC §§17.51, 17.52, 17.54, 17.56, 17.59

The amendments to §17.51, 17.52, 17.54 and 17.56 and new §17.59 are proposed under the Texas Agriculture Code, §12.0175, as amended by HB 1858, which authorizes the department to establish by rule programs to promote and market agricultural products and other products, grown, processed or produced in the state and to charge a membership fee for participation in such programs.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 12.

§17.51. Definitions.

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

(1) - (11) (No change.)

(12) Other Products--

(A) Any product produced in Texas which is not a Texas agricultural product, as defined in paragraph (21) of this section, but is:

(i) produced, manufactured, constructed or created within the state; or

(ii) is processed within the state such that it has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics; and

(iii) such product enhances the GO TEXAN program;

(B) Products described in subparagraph (A) of this paragraph which are produced in Texas, but processed outside of Texas do not meet GO TEXAN program requirements, unless facilities for processing are not reasonably available in Texas.

(C) For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being an "other product" or processed other product and shall have the sole discretion to determine whether a product enhances the GO TEXAN program.

(13) [~~(12)~~] Person--An individual, firm, partnership, corporation, governmental entity, or association of individuals.

(14) [~~(13)~~] Processed food product--Non-Texas agricultural food product which has undergone a value-added procedure in Texas to change or add to its physical characteristics, including, but not limited to, cooking, baking, heating, drying, mixing, grinding, churning, separating, extracting, cutting, fermenting, distilling eviscerating, preserving, packaging, dehydrating, washing, culling or freezing. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed food product. One hundred percent fresh beef and processed 100% beef products must comply with the requirements of 17.58 of this title (relating to GO TEXAN Beef Program).

(15) [~~(14)~~] Processed natural fiber or natural wood product--Non-Texas raw, natural fiber or natural wood which has undergone mechanical or physical changes in Texas resulting in a finished, distinct product. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a processed natural fiber and wood product.

(16) [~~(15)~~] Produced in Texas--An agricultural product is produced in Texas if:

(A) the agricultural product is grown, raised, nurtured, sown, or cultivated within the state; or

(B) the agricultural product has been altered by a mechanical or physical value-added procedure in Texas to change or add to its physical characteristics.

(C) Products produced in Texas, but processed out of Texas do not meet GO TEXAN program requirements, unless facilities for processing are not reasonably available in Texas.

(17) [~~(16)~~] Producer--Any person who:

(A) produces agricultural product(s) grown, raised, nurtured, sown, or cultivated in the State of Texas;

(B) produces Texas processed agricultural product(s); or

(C) produces Texas product(s) that is/are not processed outside of Texas, unless facilities for processing are not reasonably available in Texas.

(18) [~~(17)~~] Texas processed agricultural product--Non-Texas agricultural product, excluding processed food product and processed natural wood and natural fiber product, which has undergone a value added procedure in Texas that changes or adds to its physical characteristics. For purposes of this subchapter, the department shall have the sole discretion to determine whether a product qualifies as being a Texas processed agricultural product.

(19) [~~(18)~~] TAP mark--The term "Texas Agricultural Product" or the following mark embracing the same, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(19)
[~~Figure: 4 TAC §17.51(18)~~]

(20) [~~(19)~~] Taste of Texas mark--A flag-shaped mark bearing the words "Taste of Texas," so colored as to model closely the flag of the State of Texas, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(20)
[~~Figure: 4 TAC §17.51(21)~~]

(21) [~~(20)~~] Texas agricultural product--An agricultural, apicultural horticultural, silvicultural, viticultural, or vegetable product, either in its natural or processed state, that has been produced, processed, or otherwise had value added to the product in this state, including:

(A) equine species;

(B) feed for use by livestock or poultry;

(C) fish or other aquatic species;

(D) livestock, a livestock product, or a livestock by-product;

(E) planting seed;

(F) poultry, a poultry product, or a poultry by-product; or

(G) wildlife processed for food or by-products.

(22) [~~(21)~~] Texas Grown mark--A vertical and rectangular mark which features a native Texas mountain laurel branch in bloom over an outline of the state of Texas with the word "Texas" at the top and the word "Grown" at the bottom of the rectangle, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(22)
[~~Figure: 4 TAC §17.51(21)~~]

(23) [~~(22)~~] Vintage Texas mark--A vertical, rectangular mark consisting of a cluster of six grapes loosely forming a triangle and topped by a single grape leaf, all centered in the middle of a five-pointed star. Coming from behind the top center point of the star is a short curlicue line representing a grapevine. One horizontal line intersects with the tip of the center point of the star, and a parallel horizontal line intersects the two bottom points of the star. The word "VINTAGE" appears above the top parallel line, and the word "TEXAS" appears below the bottom parallel line, such mark being registered with the Secretary of State's office by the department.
Figure: 4 TAC §17.51(23)
[~~Figure: 4 TAC §17.51(22)~~]

§17.52. Application for Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark.

(a) - (o) (No change.)

(p) In the evaluation of an applicant or registrant, the department shall have the right and discretion to consider information regarding the applicant or member which in the department's discretion may:

(1) hinder or frustrate the department's efforts to expand or encourage development of the markets for Texas agricultural and other products; or

(2) fail to conform to any standards which may be set from time to time by the department for the purpose of enhancing the integrity and image of the program.

(q) The consideration of information as provided in subsection (p) of this section may include review of criminal information available to the public and to the extent allowed by applicable laws and regulations.

§17.54. Denial of Application To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Marks [~~Mark~~].

An application for registration or license to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark may be denied if:

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

(5) applicant's use of the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark would either:

(A) hinder or frustrate the department's efforts to expand or encourage development of the markets for Texas agricultural and other products; or

(B) fail to conform to any standards which may be set from time to time by the department for the purpose of enhancing the integrity and image of the program; or

(6) [~~(5)~~] for reasons of policy, as determined by the department.

§17.56. Termination of Registration To Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Marks [~~Mark~~].

(a) Registration to use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark may be revoked at any time if the mark is misused.

(b) Misuse of the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design mark includes, but is not limited to:

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

(3) use of the mark would either:

(A) hinder or frustrate the department's efforts to expand or encourage development of the markets for Texas agricultural and other products; or

(B) fail to conform to any standards which have been set by the department for the purpose of enhancing the integrity and commercial appeal of the program.

(4) [~~(3)~~] use of the mark in a manner violating any rule promulgated by the commissioner.

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

§17.59. Non-Agricultural Member; Other Products; Products Produced in this State.

(a) Permission to use the GO TEXAN and Design mark. Permission to use the GO TEXAN and Design mark may be granted by the Department to registrants and licensees who have been properly certified as a "Non-Agricultural Member" to promote Texas "Other Products," as defined in §17.51 of this title (relating to Definitions).

(b) Application process:

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application for Registration To Use the GO TEXAN and Design Mark).

(2) Except as otherwise provided in this section, §§17.53 - 17.56 of this title (relating to requirements for membership in the general "GO TEXAN" program) shall apply to entities certified under this section.

(c) Eligibility Requirements and Limited Use Restrictions:

(1) licensees granted use of the GO TEXAN and Design mark under this section shall only use the mark for the limited purpose stated in the certificate of registration. Use of the mark is limited and use is subject to department rules.

(2) licensee shall be granted a limited, non-exclusive license to use the mark solely in conjunction with the reproduction, display, advertisement and promotion associated with the product for which licensee has applied, within the United States, on the date(s) which licensee specified in the application;

(3) licensee shall furnish the department a sample of any material bearing the mark, including but not limited to all advertising, promotional, and display materials, at no charge, for the department's written approval prior to any use thereof;

(4) licensee's proposed licensed use shall be subject to review and acceptance by the Department;

(5) licensee shall affix on all items utilized in the licensed use, appropriate legal notices, as follows: GO TEXAN and Design is a certification mark of, and is used under license from, the Texas Department of Agriculture;

(6) licensee's license to use, shall not be construed to grant or assign any right, title or interest in or to the mark or the goodwill attached thereto; and

(7) any and all use of the mark by registrant as allowed under program rules shall inure solely to the benefit of the department.

(d) Unless permission is otherwise granted by the department, licensees granted use of the GO TEXAN and Design mark under this section shall only receive the following benefits, and only at the sole discretion of the department, of the GO TEXAN program:

(1) use of the GO TEXAN and Design mark in accordance with the requirements of this section;

(2) inclusion in the Go TEXAN product directory listings on the GO TEXAN website on the World Wide Web, should the department produce such a directory;

(3) receipt of the GO TEXAN infoletter pertaining to agricultural-related news and GO TEXAN promotional opportunities, should the department produce such an infoletter; and

(4) joint participation in GO TEXAN sponsored fair and tradeshow events, provided that the qualifying "other product" enhances agriculture and the GO TEXAN sponsored event, as determined by the sole discretion of the department.

(e) Eligibility for Participation in the GO TEXAN Partner Program. Registrants and licensees admitted into the GO TEXAN membership program under this section are not eligible to receive GO TEXAN Partner Program grant funds.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308059
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 463-4075

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SUBCHAPTER G. GO TEXAN PARTNER PROGRAM RULES

4 TAC §17.304

The amendments to §17.304 are proposed under the Texas Agriculture Code (the Code), §46.012, which authorizes the department to adopt rules to administer the Code, Chapter 46, relating to the GO TEXAN Partner Program, including rules for the use of the GO TEXAN logo.

The code that will be affected by this proposal is the Texas Agriculture Code, Chapter 46.

§17.304. Requirements for Participation.

To be eligible for participation in this program utilizing matching state funds under this subchapter, an applicant must:

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

(4) submit a notarized affidavit on a form provided by the department certifying and disclosing the following:

(A) - (B) (No change.)

(C) that the applicant or any of the owners having a 10% or more ownership interest in the applicant's business entity have not been convicted of a felony and have not been convicted of a crime involving fraud, bribery, theft, misrepresentations of material facts, misappropriation of funds, or other similar crimes within 15 years preceding the application deadline, or disclosing by the applicant and any owner having a 10% or more ownership interest in the applicant's business entity any such convictions and will notify the department of any change to this information; and

(D) that the applicant or any of the owners having a 10% or more ownership interest in the applicant's business entity are not subject to an enforcement action under state or federal securities law, a federal tax lien or any other enforcement proceeding with a government agency, or disclosing by the applicant and any owner having a

10% or more ownership interest in the applicant's business entity any such proceedings and will notify the department of any change in this information; and

(E) that applicant meets all program requirements to apply for matching funds;

(F) [~~(C)~~] that the applicant will notify the department of [~~disclosing~~] any existing or potential conflict of interest relative to the evaluation and implementation of the project plan by the board and acknowledge that applicant will notify the department of status change; and

(G) [~~(D)~~] that the applicant will disclose [~~disclosing~~] names of owners having 10% or more ownership interest in a business entity; and

[~~(E) that applicant meets all program requirements to apply for matching funds; and~~]

(5) (No change.)

(6) Should a successful applicant fail to continue to comply with the participation requirements set forth in paragraphs (4)(C) and (D) of this section, the corresponding GO TEXAN Program matching grant funds will be forfeited by the grantee and will revert back to the general GO TEXAN Partner Program Account.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308060
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
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For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER H. ELECTRICAL PLANNING

DIVISION 2. ENERGY EFFICIENCY AND CUSTOMER-OWNED RESOURCES

16 TAC §25.185

The Public Utility Commission of Texas (commission) proposes new §25.185, relating to the Energy Efficiency Incentive Program for Military Bases, which includes the Military Bases Standard Offer Program (Figure: 16 TAC §25.185(f)(1)). Project Number 28715, *Rulemaking to Establish an Energy Efficiency Incentive Program for Military Bases Pursuant to PURA §39.910*, is assigned to this proceeding.

Proposed new §25.185 is necessitated by the provisions of Public Utility Regulatory Act (PURA) §39.910. In particular, this section requires that electric utilities that are located in areas that are not subject to customer choice provide incentives to install energy efficiency devices or other alternatives on military bases. The goal for the program is for military bases to reduce electricity consumption by 5.0%. The goal must be achieved by January 1, 2005, and the 5.0% target would be based on 2002 consumption levels. Under the proposed rule, the goal is a one-time requirement to be achieved by January 1, 2005. After this date the program and requirement would go away.

The utilities would meet the goal by making sufficient funds available to fund energy savings in the equivalent of an aggregate 5.0% energy reduction by bases in its service area. The program would be structured as a standard offer program under which the utility offers predetermined incentives for kilowatt and kilowatt-hour savings, under standard terms and conditions. The proposed incentive level for the program is 50% of the cost-effectiveness standard prescribed in §25.181(e) of this title, relating to the Energy Efficiency Goal. Incentives may be raised up to 100% of the cost-effectiveness standard, if the project directly benefits military personnel qualifying as hard-to-reach customers. Military bases may participate in the program directly, or may enter in to an agreement with a third party project sponsor to provide the services.

Nieves Lopez, Chief Policy Analyst, Policy Development Division, has determined that for each year of the first five-year period the proposed 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. Lopez has determined that for each year of the first five years the proposed section is in effect the public benefit anticipated as a result of enforcing this section will be reduced energy consumption and reduction in energy costs for military bases and military personnel residing in military housing. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. There is no anticipated economic cost to persons who are required to comply with the sections as proposed because PURA §39.910(c) allows a nonbypassable surcharge or other rate mechanism to recover costs associated with the program.

Ms. Lopez has also determined that for each year of the first five years the proposed section is in effect there should be no effect on a local economy, and therefore no local employment impact statement is required under Administrative Procedure Act 2001.022.

The commission staff will conduct a public hearing on this rulemaking, if requested under Government Code §2001.029, in Hearing Room Gee, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, January 22, 2004, starting at 10:00 a.m. A request for hearing must be submitted with reply comments.

The commission seeks comments on the proposed amendments from interested persons. Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is January 5, 2004. The deadline for

reply comments is January 15, 2004. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed section. The commission will consider the costs and benefits in deciding whether to adopt the section. All comments should refer to Project Number 28715.

In addition to comments on specific subsections of the proposed rule, the commission requests that parties specifically address the following issues:

1. What utilities, if any, with service areas outside of the Electric Reliability Council of Texas are not subject to PURA §39.910, and why not?

2. What is the proper definition of a military base under PURA §39.910, and what effect will such a definition have on the electric utilities subject to PURA §39.910?

3. Should electric utilities, considering prior commission policy, be allowed to count savings achieved under this program towards satisfying the requirements of PURA §39.905?

This new section is proposed under the Public Utility Regulatory Act (Vernon 1998 and Supplement 2004) (PURA) §14.002, which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.910 which requires that the commission, by rule, establish an electric energy efficiency incentive program that mandates that utilities offer incentives to military bases located in service areas not subject to customer choice.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §39.910.

§25.185. Energy Efficiency Incentive Program for Military Bases.

(a) Purpose. The purpose of this section is to provide implementation guidelines for the Military Bases Standard Offer Program (Military Bases SOP) mandated by Public Utility Regulatory Act (PURA) §39.910. Energy efficiency projects installed under the Program must result in reductions in energy consumption and energy costs.

(b) Application. This section applies to electric utilities, as that term is defined in §25.5 of this title (relating to Definitions), in areas not subject to customer choice pursuant to PURA §39.102(a), including electric utilities conducting a pilot retail competition project under PURA §39.103 and §39.104.

(c) Eligibility for incentives. Military bases, retail electric providers, and competitive energy service providers are eligible to receive energy efficiency incentives from electric utilities. Military bases may act as their own project sponsors and receive incentives directly from the electric utility to install energy efficiency projects in their facilities. Retail electric providers and competitive energy service providers may enter into a contract with an electric utility and receive incentives to install energy efficiency projects only if they have an agreement with the military base. The military base is not under any obligation to enter into an agreement with a third- party to provide energy efficiency services. A retail electric provider operating as an energy efficiency service provider in a utility service area that is not subject to customer choice may not sell or market retail electric services in that area, unless a pilot project is being conducted in the area under PURA §39.103 and §39.104.

(d) Program goal. The goal of the Military Bases SOP is to reduce energy consumption of military bases by 5.0%, as compared to consumption levels in 2002, by January 1, 2005. Utilities will meet this goal by making sufficient incentives available based on the cost-effectiveness and avoided cost standards as set forth in §25.181(e) of this title (relating to Energy Efficiency Goal) and subsection (f) of this section. The goal shall be expressed as an aggregate based on the individual military bases' consumption in an electric utility's service area.

(e) Definitions. The words and terms in §25.181 of this title apply to this section unless modified in this subsection. In addition, the following words and terms, when used in this section shall have the following meanings unless the context clearly indicates otherwise:

(1) Competitive energy service provider--Energy efficiency service provider.

(2) Energy efficiency service provider--A person who installs energy efficiency measures or performs other energy efficiency services. An energy efficiency service provider may be a retail electric provider or a military base, if the person has executed a standard offer contract.

(3) Military base--A federally owned or operated military installation or facility that is not closed or realigned under the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. §2687), and subsequent amendments. For the purpose of this section, military bases include, but are not limited to, facilities controlled by the U.S. Army, Navy, Air Force, Marines, Army and Air National Guard, and the Coast Guard.

(4) Project sponsor--An energy efficiency service provider that has an executed standard offer contract with an electric utility.

(5) Standard offer program--A program under which a utility administers standard offer contracts between the utility and energy efficiency service providers.

(f) Basic program elements.

(1) The Program will offer incentives under the Military Bases Standard Offer Program (Military Bases SOP).
Figure: 16 TAC §25.185(f)(1)

(2) The Military Bases SOP is subject to the guidelines of §25.181(j) and (l) of this title, except for the following provisions:

(A) Programs need not be developed to address each customer class as required under §25.181(j)(2)(A) of this title.

(B) Lighting measures need not be limited to 65% of the projected savings as required by §25.181(j)(2)(G) of this title.

(C) Military bases, acting as a project sponsor, need not provide the documentation required under §25.181(j)(2)(N) of this title.

(3) Incentive payments shall be made for energy and peak demand savings. For the purpose of this section, incentive payments for military bases, as individual customers, shall not exceed 50% of the cost effectiveness standard set forth in §25.181(e) of this title. Incentive payments may be increased to 100% of the cost-effectiveness standard if the end-use beneficiary qualifies as a hard- to-reach customer residing on a military base.

(4) Incentive payments are made to the project sponsor who is under contract with the utility. The project sponsor is responsible for producing the energy savings regardless of whether it is the military base. The project sponsor, if other than the military base, is not obligated to pass on or share incentive payments with the military base.

(5) Inspection, measurement and verification requirements shall be consistent with the Military Bases SOP and in accordance with §25.181(l) of this title. Deemed savings estimates adopted under §25.184(d) of this title (relating to Energy Efficiency Implementation

Project) may be used in lieu of measurement and verification, where appropriate.

(6) Cost effectiveness and avoided cost criteria shall be consistent with §25.181(e) of this title.

(7) Projects or measures under this program are not eligible for incentive payments or compensation if:

(A) A project would achieve demand reduction by eliminating an existing function or shutting down a facility or operation;

(B) It would result in building vacancies or the re-location of existing operations to locations outside of the facility or the area served by the participating utility;

(C) A measure would be installed even in the absence of the energy efficiency service provider's proposed energy efficiency project;

(D) A project results in negative environmental or health effects, including effects that result from improper disposal of equipment and materials;

(E) The project involves the installation of self-generation or cogeneration equipment, except for renewable demand side management or fuel cell technologies; or

(F) The measure has less than a ten-year life or is a plug-in load.

(g) Utility administration. An electric utility shall administer the Military Bases SOP in a market-neutral, nondiscriminatory manner. An electric utility may not offer underlying competitive services. The cost of administration for the Military Bases SOP may not exceed 20% of the total program budget.

(1) Administrative costs include costs necessary for electric utility conducted inspections and the costs necessary to meet the following requirements:

(A) Conduct informational activities designed to explain the Military Bases SOP to energy efficiency service providers, military base personnel, and vendors;

(B) Review and select proposals for energy efficiency projects in accordance with the Military Bases SOP guidelines and applicable rules of the standard offer programs under §25.181(j) of this title, and subsection (f)(1) of this section;

(C) Inspect projects to verify that measures were installed and are capable of performing their intended function, as required in §25.181(l) of this title, before final payment is made; and

(D) Review and approve project sponsor savings monitoring reports.

(2) Only projects installed within the electric utility's service area are eligible for incentives under this program.

(3) An electric utility may not count the energy and demand savings achieved under the Military Bases SOP towards satisfying the requirements of PURA §39.905.

(4) Incentives paid for energy and demand savings under the Military Bases SOP may not supplement or increase incentives made for the same energy and demand savings under programs pursuant to PURA §39.905 or any other energy efficiency program subject to cost recovery.

(5) An electric utility may not count air contaminant emissions reductions achieved under the Military Bases SOP towards satisfying an obligation to reduce air contaminant emissions under state or federal law or a state or federal regulatory program.

(6) The electric utility shall compensate project sponsors for energy efficiency projects in accordance with the applicable rules of the standard offer programs under §25.181(j) of this title and the requirements of this section.

(h) Reporting and cost recovery. Each utility shall track its energy efficiency expenditures separately from other expenditures and report these to the commission. Costs associated with the Military Bases SOP under this section shall be recovered through a commission-approved surcharge or other rate mechanism.

(1) By April 1, 2004, each utility will file with the commission a plan indicating for calendar year 2004:

(A) The program goal for its service area as prescribed in subsection (d) of this section;

(B) The amount of incentive funds, by incentive level, being made available;

(C) The type of outreach activities conducted; and

(D) A listing of military bases expected to participate in the program.

(2) By April 1, 2005, each utility will file with the commission a report, indicating for calendar year 2004:

(A) A listing of military bases participating in the Military Bases SOP; and

(B) The amount of energy and demand savings under contract, by incentive level.

(3) By January 1, 2006, each utility will file with the commission a final report, indicating for the calendar year 2004:

(A) The amount of energy and demand savings achieved;

(B) The total amount spent on administrative activities and incentives in the program;

(C) An explanation for the reasons why, including outreach efforts, the goal under subsection (d) of this section was not met, if applicable; and

(D) The amount, by cost category, for which the electric utility is seeking cost recovery.

(4) Only costs that have resulted in energy savings counting towards the goal are subject to recovery.

(5) Reported energy savings must be measurable and documented.

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308039

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 936-7308

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 62. CAREER COUNSELING SERVICES

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules at 16 Texas Administrative Code, §§62.1, 62.10, 62.40, and 62.90 and the repeal of §62.91 regarding the career counseling services program.

The amendments are made to give effect to statutory changes made by the 78th Legislature by changing the word "commissioner" to "executive director" and updating statutory references. Section 62.40 is amended to clarify that in the event of bond cancellation, a certificate of authority holder must continue to meet the §62.40 security requirements. The repeal removes §62.91 regarding sanctions because the procedures for an administrative hearing are defined in the Government Code and in other rules regarding department procedures.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments and repeal are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed amendments and repeal are in effect, the public benefit will be that the rules reflect statutory changes and unnecessary rule language has been deleted making the rules more concise.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments and repeal. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

16 TAC §§62.1, 62.10, 62.40, 62.90

The amendments are proposed under Texas Occupations Code, Chapters 51, 53 and 2502, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed amendments are those set forth in Texas Occupations Code, Chapters 51, 53, and 2502. No other statutes, articles, or codes are affected by the proposal.

§62.1. Authority.

These rules are promulgated under the authority of the Texas Occupations Code, Chapters 51 and 2502 [~~Career Counseling Services Act, Texas Revised Civil Statutes Annotated, Article 5221a-8 (Vernon 1997), and Texas Occupations Code, Chapter 51 (Vernon 1999)~~].

§62.10. Definitions.

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

(1) The Act--Occupations Code Chapter 2502 [~~The Career Counseling Services Act, Texas Revised Civil Statutes Annotated Article 5221a-8 (Vernon 1997)~~].

(2) Arbitration--A legal process in which two or more persons agree to let an impartial person or panel decide their dispute.

(3) Arbitration organization (qualified)--A business, recognized by the department, whose credentials (education, training, and experience) indicate it is qualified to provide arbitration service to the public.

§62.40. Security Requirements.

(a) Before a certificate of authority is issued, the owner must obtain and file with the department a surety bond in the amount of $10,000 issued by a company authorized to do business as a surety in the State of Texas, on a form provided by the department and payable to the state of Texas.

(b) The bond shall be continuous and shall provide for the issuing company to give the department 30 days' written notice prior to cancellation. The owner must provide the department, before the bond is cancelled, with a surety bond or assignment of security that meets the requirements of this section.

(c) An owner may deposit a cash performance alternative of $10,000 for each business location in lieu of the bond. The cash performance alternative shall be an irrevocable assignment of security issued by a national or state bank or savings and loan association, subject to the express approval of the executive director [~~commissioner~~]. Forms for filing an assignment of security shall be provided by the department upon request.

(d) The surety bond or assignment of security shall be maintained in full during the entire time the certificate of authority is in effect.

§62.90. [~~Sanctions/~~]Administrative Penalties and Sanctions [~~/Penalties~~].

If a person violates Texas Occupations Code, Chapter 51 or 2502 [~~Revised Civil Statutes Annotated, Article 5221a-8 (Vernon 1997)~~], or a rule or order of the commission or executive director [~~Commissioner or Commission~~] relating to the Act, proceedings may be instituted to impose administrative sanctions and/or [~~recommend~~] administrative penalties in accordance with the [~~Act, or the~~] Texas Occupations Code, Chapter 51 or 2502, [~~(Vernon 1999)~~] and 16 Texas Administrative Code, Chapter 60 [~~(1999)~~] of this title (relating to the Texas Commission [~~Department~~] of Licensing and Regulation).

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

Filed with the Office of the Secretary of State on November 24, 2003.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 463-7348

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16 TAC §62.91

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

The repeal is proposed under Texas Occupations Code, Chapters 51, 53 and 2502, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposed repeal are those set forth in Texas Occupations Code, Chapters 51, 53, and 2502. No other statutes, articles, or codes are affected by the proposed repeal.

§62.91. Sanctions--Revocation, Suspension or Denial Because of a Criminal Conviction.

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

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CHAPTER 72. STAFF LEASING SERVICES

16 TAC §§72.1, 72.10, 72.20, 72.70, 72.71, 72.81, 72.90

The Texas Department of Licensing and Regulation ("Department") proposes amendments to existing rules §§72.1, 72.10, 72.20, 72.70, 72.71, 72.81, and 72.90 regarding the staff leasing services program.

The rules are amended in several places to replace the term "commissioner" with "executive director" and to remove unnecessary and duplicative language.

The amendments are made to implement provisions of Senate Bill 279, 78th Legislature, including the change from two-year licenses to one-year licenses, and to update statutory references.

The Department also deletes language in §72.90 (b) and (c) concerning administrative penalties and sanctions because the procedures for an administrative hearing are defined in the Government Code and in other rules regarding department procedures.

The proposed rules are necessary to make the rules concise and to make them more accurately reflect the statute.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the proposed amendments are in effect there will be no cost to state or local government as a result of enforcing or administering the proposed rules.

Mr. Kuntz also has determined that for each year of the first five-year period the proposed rules are in effect, the public benefit will be that the rules reflect statutory changes and that unnecessary rule language has been deleted making the rules more concise.

There will be no effect on large, small, or micro-businesses as a result of the proposed amendments. There are no anticipated economic costs to persons who are required to comply with the rules as amended.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile 512/475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Texas Labor Code, Chapter 92 and Texas Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§72.1. Authority.

These rules are promulgated under the authority of the Texas Labor Code , Chapter [~~Annotated~~ §] 91 [~~(Vernon 1997)~~] and Texas Occupations Code, Chapter 51 [~~Revised Civil Statutes Annotated, article 9100 (Vernon 1991)~~].

§72.10. Definitions.

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

(1) Application--A fully completed application form, all information required by the application form, finger prints as required and all required fees.

(2) Person--Means any individual, partnership, corporation, or any other business entity.

(3) The Code--The Texas Labor Code , Chapter [~~Annotated §~~] 91 [~~(Vernon 1997)~~].

§72.20. Licensing Requirements.

(a) Any person who performs or offers to perform staff leasing services as defined by the Code, [~~Act, after February 28, 1994~~] must first become licensed with the Texas Department of Licensing and Regulation.

(b) Any person who desires an original or renewal staff leasing services license shall complete [~~obtain~~] all necessary forms from the Texas Department of Licensing and Regulation.

[~~(c) A person whose license has expired and who wishes to continue staff leasing services shall apply for a new license and pay all fees of a new license.~~]

(c) [~~(d)~~] To obtain a "limited" license an applicant shall meet the requirements of Texas Labor Code Chapter [~~Annotated §~~] 91 [~~(Vernon 1997)~~].

(d) [~~(e)~~] Falsification of a required document is grounds for denial and/or revocation of license.

[~~(f) License application forms shall be fully executed and sworn to.~~]

§72.70. Responsibility of Licensee.

(a) All licensees shall notify assigned employees and clients of the name, mailing address, and telephone number of the department. The notice shall also contain a statement that unresolved complaints concerning a licensee or questions concerning the regulation of staff leasing services may be addressed to the department. All licensees shall notify in writing each assigned employee that, pursuant to §91.032(c) of the Code, a client company is solely obligated to pay any wages for which:

(1) obligation to pay is created by an agreement, contract, plan, or policy between the client company and the assigned employee; and

(2) the staff leasing services company has not contracted to pay.

(A) [~~(1)~~] The notice required by §72.70(a) shall be made a part of all contractual agreements between licensees and clients. The notification shall appear in a typeface no smaller than the body of the contract and shall be printed in bold face, all capital letters or contrasting color of ink, so as to be set out from the surrounding written material in a conspicuous manner.

(B) [~~(2)~~] Each assigned employee of a licensee shall be provided the notice required by subsection (a). The notice shall be provided as a wallet size card or as a notice printed not less often than once every six months on a pay check stub or a separate piece of paper provided to the assigned employee.

(C) [~~(3)~~] The licensee shall have each assigned employee sign a document indicating they received the required notification set forth in §72.70(a), which shall be kept on file for two years after employment is terminated. The signed notice may be included as part of a contract or other agreement with the assigned employee or may be a separate document.

(b) License applications and licensee information required on the application shall be updated within 45 days after any material change to any of the information provided on original or renewal applications.

§72.71. Responsibility of Licensee--Records

(a) Upon notification, the licensee shall allow the executive director [~~commissioner~~] or his designee to audit records required by the Code and any records required by these rules.

(b) All licensees shall maintain the following documents for two years following the termination of a staff leasing services contract:

(1) insurance coverage documents which may be required for filing with the Texas Department of Insurance, or insurance coverage documents which the licensee may be required to retain by the Texas Department of Insurance;

(2) all documents pertaining to insurance claims;

(3) workers compensation coverage documents;

(4) all documents pertaining to Workers compensation claims;

(5) staff leasing services contracts between the license holder and client companies;

(6) employee tax records which may be required to be retained by or filed with the Texas Workforce Commission;

(7) employee tax records which may be required to be retained by or filed with the Internal Revenue Service; and

(8) employee tax records which may be required to be retained by or filed with the county or state.

(c) This section does not require a licensee to obtain documents that it would not otherwise obtain in the course of business and does not require a licensee to obtain documents from any other person or entity. This section requires licensees to maintain copies of documents actually received in the course of business or required to be maintained by the governmental entities listed in this section.

§72.81. Fees--Licensing.

(a) The [~~two year~~] license and timely [~~two year~~] renewal licensing fee shall be:

(1) $1,000 [~~2,000~~] for 0 to 249 assigned employees;

(2) $1,500 [~~3,000~~] for 250 to 750 assigned employees; and,

(3) $2,000 [~~4,000~~] for more than 750 assigned employees.

(b) The limited staff leasing services license shall be $750.

(c) Late renewal fees for licenses issued under this chapter are provided under §60.83 of this title (relating to Late Renewal Fees).

§72.90. Sanctions--Administrative Sanctions/Penalties.

[~~(a)~~] If a person violates Texas Labor Code , Chapter [~~Annotated , Chapter~~] 91 [~~(Vernon 1999)~~], or a rule, or order of the Executive Director [~~Commissioner~~] or Commission relating to this Code and Chapter, proceedings may be instituted to impose administrative sanctions and/or [~~recommend~~] administrative penalties in accordance with this Code or Texas Occupations Code, Chapter 51,[~~(Vernon 1999),~~] and 16 Texas Administrative Code, Chapter 60 [~~(1999)~~] of this title (relating to the Texas Commission [~~Department~~] of Licensing and Regulation).

[~~(b) In determining the amount of a proposed administrative penalty or the degree of a proposed sanction, the Department shall consider the following factors.~~]

[~~(1) The severity or seriousness of the violation.~~]

[~~(2) Whether the violation was willful or intentional.~~]

[~~(3) Whether the license holder acted in good faith to avoid or mitigate the violation.~~]

[~~(4) Whether the license holder has engaged in similar violations in the past, and the penalties previously assessed by the department against other license holders under this chapter.~~]

[~~(5) The amount necessary to deter a future violation.~~]

[~~(6) Efforts made to correct the violation.~~]

[~~(7) Any other matter that justice may require.~~]

[~~(c) Enforcement Plan-Penalties and Sanctions.~~]
[~~Figure: 16 TAC §72.90(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.

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CHAPTER 73. ELECTRICIANS

16 TAC §§73.1, 73.10, 73.20 - 73.24, 73.30, 73.40, 73.60, 73.65, 73.70, 73.80, 73.90, 73.100

The Texas Department of Licensing and Regulation ("Department") proposes new rules at 16 Texas Administrative Code, Chapter 73, §§73.1, 73.10, 73.20, 73.21 - 73.24, 73.30, 73.40, 73.60, 73.65, 73.70, 73.80, 73.90, and 73.100, regarding the Electricians program.

The proposed rules are published by the Texas Department of Licensing and Regulation in response to House Bill 1487 enacted by the 78th Legislature to establish regulation of electricians and electrical contractors. Persons performing electrical work must be licensed and business entities engaged in electrical contracting must also be licensed. House Bill 1487 also includes a list of matters that fall within the definition of electrical work, but for their having been exempted.

House Bill 1487, and newly created Occupations Code, §§1305.101, 1305.102, 1305.152, and 1305.168 require the Texas Commission of Licensing and Regulation to adopt rules regarding licensing, standards of conduct, nature of activities to be performed by each class of licensee, financial responsibility of contractors, continuing education, a state electrical code, and a process to evaluate work experience. With the exception of continuing education rules, which are not required until January 2005, the rules are proposed in response to the requirements of House Bill 1487 and Occupations Code, Chapter 1305.

William H. Kuntz, Jr., Executive Director, has determined that for the first five-year period the new rules are in effect there will be costs to state government to enforce and administer the rules. That expected cost is approximately $1.85 million per year. Fees, which are included in the rules, have been set to generate revenues sufficient to cover such costs. Local governments will not experience significant fiscal implications as a result of these rules. It is possible that some municipalities may see reduced costs as a result of state-wide licensure of electricians eliminating the need for a municipal licensing program.

Mr. Kuntz also has determined that for each year of the first five-year period the new rules are in effect, the public benefit will be a clarified regulatory structure for electricians in Texas, simplifying the process for electricians to be licensed.

There will be economic costs to persons who are required to comply with the proposed new rules. The costs will be payment of required licensing fees and the cost to contractors to purchase the required insurance. The cost of licensing fees and insurance may have a disparate impact on large and small businesses. The department has no specific information regarding the sizes of the various contractors who will be affected.

Comments on the proposal may be submitted to William H. Kuntz, Jr., Executive Director, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or facsimile (512) 475-2872, or electronically: whkuntz@license.state.tx.us. The deadline for comments is 30 days after publication in the *Texas Register*.

The new rules are proposed under Title 8, Occupations Code, Chapter 1305 and Title 2, Occupations Code, Chapter 51, which authorizes the Department to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the proposal are those set forth in Title 8, Occupations Code, Chapter 1305 and Title 2, Occupations Code, Chapter 51. No other statutes, articles, or codes are affected by the proposal.

§73.1. Authority.

These rules are promulgated under the authority of Title 8, Occupations Code, Chapter 1305, and Title 2, Occupations Code, Chapter 51.

§73.10. Definitions.

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

(1) Assumed name--A name used by a business as defined in the Business and Commerce Code, Title 4, Chapter 36, Subchapter A, §36.02.

(2) Business affiliation--The business organization to which a master licensee may assign his or her license.

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

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

(5) Filed--a document is deemed to have been filed with the department on the date that the document has been received by the department or, if the document has been mailed to the department, the date a postmark is applied to the document by the U.S. Postal Service.

§73.20. Licensing Requirements--Applicant and Experience Requirements.

(a) An applicant for a license must submit the required fees with a completed application and the appropriate attachments:

(1) Applicants for Master Electrician, Master Sign Electrician, Journeyman Electrician, Journeyman Sign Electrician, Residential Wireman, and Maintenance Electrician must submit proof of a passing grade on the accepted examination.

(2) Applicants for contractor's licenses must submit proof of general liability insurance and workers' compensation insurance or a statement that the applicant has elected not to obtain workers' compensation insurance pursuant to Subchapter A, Chapter 406, Labor Code with the initial and renewal applications.

(b) An applicant must complete all requirements within one year of the date the application is filed.

(c) Except as provided by §73.24, each applicant must pass all parts of a Department accepted examination, and provide proof of a passing grade, before the applicant will be licensed. To be accepted, an examination must have been taken and passed no more than two years before the date of the application.

(d) For purposes of this chapter, 2,000 hours of on the job training shall equal one year of on the job training. On the job training must be established by letter(s) setting out dates of employment from persons who either employed or supervised the applicant or as required by the application. Letters must include the name and license type of the supervising person.

(e) Each applicant must meet the applicable eligibility requirements as set forth in the Occupations Code, §§1305.153 - 1305.161.

(f) Obtaining a license by fraud or false representation is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

§73.21. Licensing Requirements--Examinations.

(a) The Department accepts the International Code Council examination as the examination used to obtain a license issued under this chapter.

(b) To obtain a license without examination, a completed application must be filed on or before June 1, 2004 and the provisions in Section 3, House Bill 1487 of the 78th Legislative Session and §73.24 must be met.

§73.22. Licensing Requirements--General.

(a) A license issued under this chapter is valid for one year from the date of issuance and must be renewed annually.

(b) A person shall not perform work requiring a license under Title 8, Occupations Code, Chapter 1305 with an expired license.

(c) Falsification of information on an application or cheating on an examination is grounds for denial, suspension, or revocation of a license and/or an administrative penalty.

(d) An electrical contracting company shall not use a license number that is not assigned to that company by the Department.

(e) A license is not transferable.

(f) Altering a license in any way is prohibited and is grounds for a sanction and/or penalty.

(g) If a licensee contracts with a general contractor or a home warranty company to provide installation or service that requires a license under the Act, the licensee remains responsible for the integrity of that work.

(h) A person using the license of another person or allowing another person to use his license shall be subject to license denial, suspension, or revocation and/or assessment of an administrative penalty.

§73.23. Licensing Requirements--Renewal.

(a) Non-receipt of a license renewal notice from the Department does not exempt a person from any requirements of this chapter.

(b) A complete request for renewal must be filed on the form approved by the Department and include all required fees by the expiration date to maintain continuous licensure.

(c) Applications not filed by the expiration date are considered late renewals and are subject to late renewal fees.

(d) Licenses issued from a late renewal application will have an unlicensed period from the expiration date of the previous license to the issuance date of the renewed license. Work that requires a license issued under this chapter shall not be performed during the unlicensed period.

§73.24. Licensing Requirements--Waiver of Examination Requirements.

(a) Upon acceptable proof of an applicant's qualifications, the Executive Director may waive the examination requirement of §73.21 if the application is filed on or before June 1, 2004.

(b) Acceptable proof of an applicant's qualifications may include any or all of the following:

(1) a form prescribed by the Department that certifies completion of the required hours of on-the-job training under the supervision of a master electrician or master sign electrician as appropriate.

(2) a form prescribed by the Department and completed by the municipality or region in which the applicant was licensed for at least one year.

(3) a transcript, diploma or certificate evidencing graduation from an applicable apprenticeship program with the required number of hours of job-related education. The apprenticeship program must be approved and registered by the U.S. Department of Labor, Bureau of Apprenticeship and Training or other organizations recognized by the Department.

§73.30. Exemptions.

This chapter does not apply to electrical work as provided in the Occupations Code, §1305.003.

§73.40. Insurance Requirements.

(a) Electrical contractors and electrical sign contractors are required to maintain at least the minimum general liability insurance coverages at all times to satisfy proof of financial responsibility. The insurance must:

(1) be at least $300,000 per occurrence (combined for property damage and bodily injury);

(2) be at least $600,000 aggregate (total amount the policy will pay for property damage and bodily injury coverage); and

(3) be at least $300,000 aggregate for products and completed operations.

(b) A license applicant or licensee shall file with the Department a completed certificate of insurance or other evidence satisfactory to the Department when applying for an initial and renewal licenses and upon request of the Department.

(c) Proof of the required general liability and workers' compensation insurance can be submitted on an industry standard certificate of insurance form with a 30 day cancellation notice.

(d) A licensed contractor shall furnish the name of the insurance carrier, policy number, name, address, and telephone number of the insurance agent with whom the contracting company is insured to any customer who requests it.

(e) Insurance must be obtained from an admitted company or an eligible surplus lines carrier, as defined in the Texas Insurance Code, Article 1.14-2, or other insurance companies that are rated by A.M. Best Company as B+ or higher.

§73.60. Standards of Conduct for Licensee.

(a) *Competency.* The licensee shall be knowledgeable of and adhere to the Act, the rules, applicable codes, and all procedures established by the Department for licensees. It is the obligation of the licensee to exercise reasonable judgment and skill in the performance of all duties and work performed as a licensee.

(b) *Integrity.* A licensee shall be honest and trustworthy in the performance of all duties and work performed as a licensee, and shall avoid misrepresentation and deceit in any fashion, whether by acts of commission or omission. Acts or practices that constitute threats, coercion, or extortion are prohibited.

(c) *Interest.* The primary interest of the licensee is to ensure compliance with the Act, the rules, and all applicable codes. The licensee's position, in this respect, should be clear to all parties concerned while in the performance of all duties and work performed as a licensee.

(d) *Specific Rules of Conduct.* A licensee shall not:

(1) participate, whether individually or in concert with others, in any plan, scheme, or arrangement attempting or having as its purpose the evasion of any provision of the Act, the rules, or the standards adopted by the Commission;

(2) Knowingly furnish inaccurate, deceitful, or misleading information to the Department, a consumer, or other person while performing as a licensee;

(3) engage in any activity that constitutes dishonesty, misrepresentation, or fraud while performing as a licensee; and

(4) perform duties or work as a licensee in a negligent or incompetent manner.

§73.65. Advisory Board.

(a) Board meetings are called by the presiding officer. Meetings in excess of those mandated by the Act may be authorized by the Executive Director.

(b) Expenses reimbursed to board members shall be limited to authorized expenses incurred while on board business and traveling to and from board meetings. The least expensive method of travel should be used. Expenses can be reimbursed to board members only when the legislature has specifically appropriated money for that purpose.

(c) Expenses paid to board members shall be limited to those allowed by the State of Texas Travel Allowance Guide and the Texas Department of Licensing and Regulation policies governing travel allowances for employees.

§73.70. Responsibility of Licensee--Standards of Conduct.

(a) An individual licensee must provide all electrical work requiring a license through a licensed contractor.

(b) The licensee shall accurately and truthfully represent to any prospective client or employer, his or her capabilities and qualifications to perform the services to be rendered.

(c) The licensee shall not offer to perform, nor perform, technical services for which he or she is not qualified by education or experience, without securing the services of another who is qualified.

(d) The licensee shall not evade responsibility to a client or employer.

(e) The licensee shall not agree to perform services if any significant financial or other interest exists that may be in conflict with:

(1) The obligation to render a faithful discharge of such services; or

(2) Would impair independent judgment in rendering such services.

(f) The licensee should withdraw from employment when it becomes apparent that it is not possible to faithfully discharge the duty and performance of services owed the client or employer, but then only upon reasonable notice to the client or employer. A licensee who does not withdraw must inform the consumer of the facts that give rise to the duty to withdraw.

(g) The licensed contractor shall not engage in advertising that is false, misleading, deceptive, or which does not clearly display the licensee's state license number.

(h) The licensee shall not misrepresent the amount or extent of prior education or experience to any employer or client, or to the Department.

(i) The licensee shall not hold him or herself out as being engaged in partnership or association with any person unless a partnership or association exists in fact.

(j) Licensees must abide by all laws and rules regulating electricians, including the Standards of Conduct set forth in this section, within any geographic location in this state when performing or offering to perform electrical work.

(k) In areas where no electrical code is adopted, the state approved code shall be followed by the licensee.

§73.80. Fees.

(a) Application and renewal fees:

(1) Master Electrician--$75

(2) Master Sign Electrician--$75

(3) Journeyman Electrician--$50

(4) Journeyman Sign Electrician--$50

(5) Residential Wireman--$25

(6) Maintenance Electrician--$25

(7) Electrical Contractor--$125

(8) Electrical Sign Contractor--$125

(9) Electrical Apprentice--$15

(b) Late Renewal Fees

(1) A person whose license has been expired for 90 days or less may renew the license by paying a late renewal fee equal to 1 and 1/2 times the normally required renewal fee.

(2) A person whose license has been expired for more than 90 days but less than two years may renew the license by paying a late renewal fee equal to two times the normally required renewal fee.

(3) A person paying a late renewal fee is not required to pay the normally required renewal fee.

(c) Issuance of a revised or duplicate license is $25.

(d) All fees are non-refundable.

§73.90. Sanctions--Administrative Sanctions/Penalties.

If a person violates any provision of Title 8, Occupations Code, Chapter 1305, any provision of Title 16, Texas Administrative Code, Chapter 73, or any provision of an order of the Executive Director or Commission, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Title 8, Texas Civil Statutes, Chapter 1305, Texas Occupations Code, Chapter 51; and Title 16, Texas Administrative Code, Chapter 60.

§73.100. Technical Requirements.

Effective September 1, 2004 the Department adopts the National Electrical Code, 2002 Edition as it existed August 2, 2001 as adopted by the National Fire Protection Association, Inc.

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

Filed with the Office of the Secretary of State on November 24, 2003.

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William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE PERMANENT SCHOOL FUND

19 TAC §§33.1, 33.15, 33.20, 33.35, 33.40, 33.45

The State Board of Education (SBOE) proposes amendments to §§33.1, 33.15, 33.20, 33.35, 33.40, and 33.45, concerning the statement of investment objectives, policies, and guidelines of the Texas Permanent School Fund (PSF). The sections establish definitions, requirements, and procedures for the investment of the Texas PSF. The proposed amendments would implement changes reflecting the impact of the September 13, 2003, voter approval of Proposition 9, the constitutional amendment on the distribution of the PSF, as follows.

Section 33.1, Constitutional Authority and Constitutional Restrictions, would be amended to reflect the constitutional change relating to the amount distributed from the PSF to the Available School Fund.

Section 33.15, Objectives, would be amended to reflect updated language relating to investment objectives, goals and objectives of the PSF, investment rate of return and risk objectives, and asset allocation policy.

Section 33.20, Responsible Parties and Their Duties, would be amended to revise the definition and responsibilities of investment counsel employed to assist with aspects of the PSF.

Section 33.35, Guidelines for the Custodian and the Securities Lending Agent, would be amended to add language relating to cash collateral reinvestment guidelines.

Section 33.40, Trading and Brokerage Policy, would be amended to elaborate upon the principles guiding PSF transactions.

Section 33.45, Proxy Voting Policy, would be amended to clarify the use of proxy voting companies.

Holland Timmins, Director of Equities, has determined that for the first five-year period the amendments are in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections. Changes in spending rules will increase distribution significantly from the 2004 - 2005 Texas Comptroller's Biennial Revenue Estimate. An increase of $146,680,000 is anticipated for fiscal year 2004 and an increase of $136,380,000 is anticipated for fiscal year 2005.

Mr. Timmins has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be the update of provisions supporting the management and investment of the PSF. The distribution of the PSF will flow to the school districts and reduce the tax burden to the public and the state of Texas. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

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

The amendments are proposed under the Texas Education Code, §7.102(c)(31), which authorizes the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and the Texas Education Code, Chapter 43.

The amendments implement the Texas Education Code, §7.102(c)(31), and Chapter 43.

§33.1. Constitutional Authority and Constitutional Restrictions.

(a) The Texas Permanent School Fund (PSF) is comprised of the principal of all bonds and other funds, and the principal arising from the sale of the lands set apart for the PSF, including dividends and other income to the fund. The total amount distributed from the permanent school fund to the available school fund:[. ~~The interest and dividends derived from the PSF and any taxes authorized and levied shall be the Available School Fund, which shall be applied annually to the support of the public free schools.~~]

(1) must be an amount that is not more than 6.0% of the average of the market value of the permanent school fund, excluding real property belonging to the fund on the last day of each of the 16 state fiscal quarters preceding the regular session of the legislature that begins before that state fiscal biennium, in accordance with the rate adopted by:

(A) a vote of two-thirds of the total membership of the State Board of Education, taken before the regular session of the legislature convenes; or

(B) the legislature by general law or appropriation, if the State Board of Education does not adopt a rate as provided by subparagraph (A) of this paragraph; and

(2) over the 10-year period consisting of the current state fiscal year and the nine preceding state fiscal years, may not exceed the total return on all investment assets of the permanent school fund over the same 10-year period.

(b) (No change.)

§33.15. Objectives.

(a) Investment objectives.

(1) Investment objectives have been formulated based on the following considerations:

(A) - (B) (No change.)

(C) the risk tolerance set by the State Board of Education (SBOE) and the need for diversification [~~diversity~~];

(D) - (G) (No change.)

(2) - (4) (No change.)

(b) Goal and objectives for the PSF.

(1) (No change.)

(2) Objectives.

(A) (No change.)

(B) Fixed income securities shall be purchased at the highest yield consistent with the preservation and safety of principal[, ~~emphasizing current rather than deferred income~~].

(C) To the extent possible, the PSF administrators shall hedge against inflation [~~by purchasing equities that emphasize stability and growth of future earnings and dividends rather than current return~~].

(D) (No change.)

(c) Investment rate of return and risk objectives.

(1) (No change.)

(2) Investment rates of return shall adhere to the Association for Investment Management and Research-Performance Presentation Standards (AIMR-PPS) guidelines in calculating and reporting investment performance return information [~~be based on a time-weighted calculation, compounded and annualized over a rolling period of three to five years, and shall take into account all cash income plus realized and unrealized capital gains and losses, and calculated gross and net of fees and expenses~~].

(3) - (4) (No change.)

(5) The objective of the domestic equity fund shall be to earn, over time, an average annual total rate of return that meets or exceeds that of a representative benchmark index, combining dividends and capital appreciation, while maintaining an acceptable risk level compared to that of the representative benchmark index.

(6) The objective of the international equity fund shall be to earn, over time, an average annual total rate of return that meets or exceeds that of a representative international benchmark index in U.S. dollars, combining dividends and capital appreciation, while maintaining an acceptable risk level compared to that of the representative benchmark index.

(7) The objective of the domestic fixed income fund shall be to earn, over time, an average annual total rate of return that meets or exceeds that of a representative benchmark index, combining interest income and capital appreciation, while maintaining an acceptable risk level compared to that of the representative benchmark index.

~~[(8) The objective of the international fixed income fund shall be to earn, over time, an average annual total rate of return that exceeds the return of a representative Non-U.S. benchmark index in U.S. dollars, combining interest income and capital appreciation, while maintaining an acceptable risk level compared to that of the representative benchmark index.]~~

(8) [~~(9)~~] The objective of the short-term cash fund shall be to provide liquidity for the timely payment of security transactions, while earning a competitive return. The expected return, over time, shall meet or exceed that of the representative benchmark index, while maintaining an acceptable risk level compared to that of the representative benchmark index.

(9) [~~(10)~~] Notwithstanding the risk parameters specified in paragraphs (4) - (8) [~~(4) - (9)~~] of this subsection, consideration shall be given to marginal risk variances exceeding the representative benchmark indices if returns are commensurate with the risk levels of the respective portfolios. [~~Additional consideration shall be given to meeting the projected income expectations of the PSF in each respective biennium as a guideline in allocating assets to the respective PSF investment managers, if this guideline is consistent with the prudent person mandate of the Texas Constitution, Article VII, §5(d), and the SBOE asset allocation strategy.~~]

(d) Asset allocation policy.

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

(3) The SBOE Committee on School Finance/Permanent School Fund, with the advice of the PSF investment staff, shall review the provisions of this section at least annually and, as needed, rebalance the assets of the portfolio according to the asset allocation rebalancing procedure specified in the PSF Investment Procedures Manual. The SBOE Committee on School Finance/Permanent School Fund shall consider the industry diversification and the percentage allocation between fixed income and equity securities within the following asset classes:

(A) - (B) (No change.)

(C) domestic fixed income; and

~~[(D) international fixed income; and]~~

(D) [~~(E)~~] cash.

(4) - (5) (No change.)

§33.20. Responsible Parties and Their Duties.

(a) (No change.)

(b) The SBOE shall be responsible for overseeing all aspects of the PSF and may employ any of the following parties, whose duties and responsibilities are as follows.

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

(4) Investment counsel or consultant is a person or firm retained under criteria specified in the PSF Investment Procedures Manual to advise PSF investment staff and the SBOE Committee on School Finance/Permanent School Fund within the policy framework established by the SBOE. [~~Counsel may advise PSF internal managers regarding various issues, including: selecting companies in different industries; specific stock or corporate bond issues or other investment instruments; and timing of purchases and sales.~~] Counsel is responsible for asset allocation reviews, manager searches, spending policy recommendations and research related to the management of the fund's assets [~~advises on the economic and market environment and asset allocation and provides PSF investment staff direction on diversifying investments between asset classes and among respective industries~~].

(5) - (7) (No change.)

(c) - (g) (No change.)

§33.35. Guidelines for the Custodian and the Securities Lending Agent.

Completing custodial and security lending functions in an accurate and timely manner is necessary for effective investment management and accurate records.

(1) A custodian shall have the following responsibilities regarding the segments of the funds for which the custodian is responsible.

(A) - (F) (No change.)

(G) Distribute all proxy voting materials [~~to the PSF investment staff~~] in a timely manner.

(H) - (I) (No change.)

(2) A securities lending agent for the PSF shall have the following responsibilities.

(A) - (G) (No change.)

(H) Comply with restrictions on types of securities lending transactions or eligible investments of cash collateral or any other restrictions imposed by the SBOE or the PSF investment staff. Cash collateral reinvestment guidelines must meet the following standards.

(i) Permissible investments.

(I) U.S. Government and U.S. Agencies, under the following criteria:

(-a-) any security issued by or fully guaranteed as to payment of principal and interest by the U.S. Government or a U.S. Government Agency or sponsored Agency, and eligible for transfer via Federal Reserve Bank book entry, Depository Trust Company book entry, and/or Participants Trust Company book entry;

(-b-) maximum one-year maturity on fixed rate;

(-c-) maximum one-year maturity on floating rate, with maximum reset period of 90 days; and

(-d-) no maximum dollar limit.

(II) Bank obligations, under the following criteria:

(-a-) time deposits with maximum 60-day maturity on fixed rate or floating rate, with maximum reset period of 60 days;

(-b-) negotiable Certificates of Deposit with maximum one-year maturity on fixed rate or floating rate, with maximum reset period of 90 days;

(-c-) bank notes with maximum one year maturity on fixed rate or maximum one year maturity on floating rate, with maximum reset period of 90 days;

(-d-) bankers acceptances with maximum 45-day maturity;

(-e-) banks with at least $25 billion in assets with a short-term rating of "Tier 1" as defined in clause (ii)(IV) of this subparagraph. In addition, placements can be made in branches within the following countries:

(-1-) Canada;

(-2-) France;

(-3-) United Kingdom; and

(-4-) United States; and

(-f-) dollar limit maximum per institution of 5.0% of investment portfolio at time of purchase.

(III) Commercial paper, under the following criteria:

(-a-) dollar limit maximum per issuer of 5.0% of investment portfolio at time of purchase including any other obligations of that issuer as established in subclause (II)(-d-) of this clause. If backed 100% by bank Letter of Credit, then dollar limit is applied against the issuing bank;

(-b-) must be rated "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-c-) maximum 270-day maturity.

(IV) Corporate debt (other than commercial paper), under the following criteria:

(-a-) must be senior debt;

(-b-) maximum one-year maturity on fixed rate;

(-c-) maximum one-year maturity on floating rate, with maximum rest period of 90 days;

(-d-) issuers or guarantor's short-term obligations must be rated "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-e-) dollar limit maximum per issuer of 5.0% of investment portfolio at time of purchase, including any other obligations of that issuer.

(V) Reverse repurchase agreements, under the following criteria:

(-a-) counterparty must be "Tier 1" rated as defined in clause (ii)(IV) of this subparagraph or be a "Primary Dealer" in Government Securities as per the New York Federal Reserve Bank;

(-b-) underlying collateral may be any security permitted for direct investment;

(-c-) lending agent or a third party custodian must hold collateral under tri-party agreement;

(-d-) collateral must be marked to market daily and maintained at the following margin levels;

(-1-) U.S. Government, U.S. Government Agency, sponsored Agency, International Organization at 100%;

(-2-) Certificate of Deposits, Bankers Acceptance, bank notes, commercial paper at 102% under one year to maturity and rated at least "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-3-) corporate debt (other than commercial paper) at 110% rated at least AA2/AA;

(-e-) due to daily margin maintenance, dollar limits and maturity limits of underlying collateral are waived, except with respect to the maturity limit in subclause (II)(-d-) of this clause;

(-f-) maximum 180-day maturity; and

(-g-) dollar limit for total reverse repurchase agreements is the greater of $300 million or 15% of value of cash collateral portfolio with one counterparty at time of purchase.

(VI) Foreign sovereign debt, under the following criteria:

(-a-) any security issued by or fully guaranteed as to payment of principal and interest by a foreign government whose sovereign debt is rated AA2/AA or better. Securities must be delivered to Lending Agent or a third party under a Tri-Party agreement;

(-b-) dollar limit maximum per issuer or guarantor of 2.5% of investment portfolio; and

(-c-) maximum maturity of one year.

(VII) Short Term Investment Fund (STIF) and/or Registered Mutual Funds, under the following criteria:

(-a-) funds must comprise investments similar to those that would otherwise be approved for securities lending investment under the provisions of this subparagraph, not invest in derivatives, and not re-hypothecate assets;

(-b-) lender must approve each fund in writing and only upon receipt of offering documents and qualified letter; and

(-c-) fund must have an objective of a constant share price of one dollar.

(ii) Investment parameters.

(I) Maximum weighted average maturity of investment portfolio must be 180 days.

(II) Maximum weighted average interest rate exposure of investment portfolio must be 60 days.

(III) All investments must be U.S. dollar-denominated.

(IV) "Tier 1" credit quality is defined as investment grade by the following Nationally Recognized Securities Ratings Organizations (NRSRO):

(-a-) Standard & Poor's;
(-b-) Moody's Investors Service;
(-c-) Fitch Investors Service; and
(-d-) Duff & Phelps, LLC.

(V) At time of purchase all investments must be rated in the highest short-term numerical category by at least two NRSROs, one of which must be either Standard & Poor's or Moody's Investors Service.

(VI) Issuer's ratings cannot be on negative credit watch at the time of purchase.

(VII) Asset backed securities and mortgage backed securities are not permitted.

(I) - (J) (No change.)

§33.40. Trading and Brokerage Policy.

(a) Security transaction policy.

(1) The following principles shall guide all Texas Permanent School Fund (PSF) transactions.

(A) Each manager shall be responsible for complying fully with PSF policies for trading securities and selecting brokerage firms, as specified in this section. In particular, the emphasis of security trading shall be on best execution; that is, the highest proceeds to the PSF and the lowest costs, net of all transaction expenses. Placing orders shall be based on the financial viability of the brokerage firm and the assurance of prompt and efficient execution.

~~[(A) Best execution and lowest cost must apply to each PSF trade.]~~

(B) (No change.)

(2) - (3) (No change.)

(b) (No change.)

(c) Guidelines for selecting a brokerage firm.

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

(3) Exemptions.

(A) Broker/dealer firms that are certified as Texas based historically underutilized businesses (HUBs) are exempted from the requirements specified in paragraph [~~subsection (c)~~] (2)(B), (D), and (H) of this subsection [~~section~~]; and

(B) broker/dealer firms that are operating as electronic communication networks are exempted from the requirements specified in paragraph [~~subsection (c)~~](2)(B) of this subsection [~~section~~].

(4) Reporting requirements. The executive administrator of the PSF will report to the SBOE Committee on School Finance/Permanent School Fund, on an ongoing basis, a list of broker dealers with whom the PSF has conducted business during the fiscal year that have been granted exemptions under paragraph [~~subsection (c)~~](2)(B), (D), and (H) of this subsection [~~section~~] and will identify the specific exemptions granted.

(5) (No change.)

§33.45. Proxy Voting Policy.

The State Board of Education (SBOE) recognizes its fiduciary obligations with respect to the voting of proxies of companies with securities that are owned by the Texas Permanent School Fund (PSF). Because the issues related to proxy voting are complex and directly impact investment values, the SBOE believes the PSF is best suited to vote the proxies of shares held in the PSF portfolio. Therefore, as part of the PSF investment policy, the SBOE instructs the PSF executive administrator and investment staff to vote all of the PSF proxies of companies according to the following guidelines. The executive administrator may delegate voting of proxies of securities not held in internally managed portfolios to external investment managers or proxy voting companies, provided voting is in accordance with the following guidelines.

(1) - (4) (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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Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
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For further information, please call: (512) 463-9701

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CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER C. GENERAL EDUCATIONAL DEVELOPMENT

19 TAC §89.47

The State Board of Education (SBOE) proposes an amendment to §89.47, concerning general educational development (GED). The section establishes provisions relating to the issuance of a GED certificate and a copy of test scores. The proposed amendment would update the current rule to reflect an increase in the non-refundable fee assessed for issuance of a certificate and a copy of test scores.

The Texas Education Agency incurs expenditures related to the issuance of GED certificates. GED revenues (generated by fees) for fiscal year 2003 will fall significantly short of the current projected budget. Projected revenues have not been met due to rising administrative costs and a steady decrease of test takers in recent years. The provisions of this proposed amendment would meet the revenue shortfall.

The proposed amendment to 19 TAC §89.47 would increase the non-refundable fee for the issuance of a GED certificate and test scores from $10.00 to $12.50 beginning in fiscal year 2004. This amendment would provide additional revenues needed to be self-supporting as mandated by Texas Education Code, §7.111, without imposing an extraordinary economic burden on the test takers or the state of Texas.

Susan Barnes, Associate Commissioner for Standards and Programs, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state or local government as a result of enforcing or administering

the section. An increase for the Texas Education Agency in the amount of $31,250 is expected for fiscal year 2004 and $62,500 each year for fiscal years 2005 - 2008. The projected increase in revenue will result from the $2.50 increase in the non-refundable fee assessed for issuance of a certificate and a copy of the test scores. This estimate assumes an average of 25,000 first-time test takers annually with implementation beginning mid-year fiscal year 2004.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be the provision for the GED program to continue to be self supporting. Students would continue to have another opportunity to earn a Texas high school credential with a minimal fee increase. There will not be an effect on small businesses. There is anticipated economic cost to persons who are required to comply with the amendment. Applicants who take the GED test currently pay a fee of $10.00. This amendment would increase the one time non-refundable fee to $12.50. Only first-time test takers would be affected. Data from the University of Texas Scoring Center suggests that approximately 76% of total testing volume are first-time test takers. First-time test takers would incur an additional $2.50 to obtain the certificate and a copy of the test scores. This estimate assumes an average of 25,000 first-time test takers annually with implementation beginning mid-year fiscal year 2004.

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

The amendment is proposed under the Texas Education Code, §7.111, which authorizes the State Board of Education by rule to establish and require payment of a fee as a condition of the issuance of a high school equivalency certificate and a copy of the scores of the examinations. The statute further states that the fee must be reasonable and designed to cover the administrative costs of issuing the certificate and a copy of the scores.

The amendment implements the Texas Education Code, §7.111.

§89.47. Issuance of the Certificate.

(a) (No change.)

(b) Following review for eligibility and approval, certificates will be issued directly to clients. A nonrefundable fee of $12.50 [~~$10~~] will be assessed for issuance of a certificate and a copy of test scores. A permanent file shall be maintained for all certificates issued.

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

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

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Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
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CHAPTER 157. HEARINGS AND APPEALS
SUBCHAPTER A. GENERAL PROVISIONS FOR HEARINGS BEFORE THE STATE BOARD OF EDUCATION

The State Board of Education (SBOE) proposes the repeal of §§157.1 - 157.20 and new §§157.1 - 157.4, concerning hearings and appeals. Sections 157.1 - 157.20 proposed for repeal establish the procedures for appeals heard by the SBOE regarding charter school contracts and administrative penalties for violations of textbook requirements. Proposed new §§157.1 - 157.4 clarify the scope and purpose of hearings before the SBOE and address the transfer of proceedings to the State Office of Administrative Hearings. The proposed repeal and new sections bring the rules into closer alignment with current statute.

Texas Education Code (TEC), §§12.028, 12.116, and 31.151, and Texas Government Code, §2001.004, authorized the adoption of procedural rules in 19 TAC Chapter 157, Subchapter A, to govern SBOE hearings involving charter contracts with charter schools and textbook publisher due process hearings pertaining to administrative penalties. The hearings authority under TEC, Chapter 12, relating to charter schools was transferred to the commissioner of education. The proposed revisions to Subchapter A would streamline the hearings process before the SBOE and would also provide that the State Office for Administrative Hearings will conduct hearings on behalf of the SBOE. These rule actions propose that the rules in Subchapter A be repealed and that pertinent rules from that subchapter be revised, renumbered, and adopted new.

David Anderson, General Counsel, has determined that for the first five-year period the repeals and new 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. Anderson has determined that for each year of the first five years the repeals and new sections are in effect the public benefit anticipated as a result of enforcing the sections will be the update of procedural steps governing an appeal to the SBOE. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 475-3499. All requests for a public hearing on the proposed repeals and new sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

19 TAC §§157.1 - 157.20

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

The repeals are proposed under the Texas Education Code (TEC), §12.116 and §12.1162, which authorizes the commissioner of education to adopt rules and procedures for charter school hearings.

The repeals implement the Texas Education Code, §12.116 and §12.1162.

§157.1. Scope and Purpose.
§157.2. Definitions.
§157.3. Administrative Law Judge.
§157.4. Classification of Parties.
§157.5. Appearances.
§157.6. Conduct and Decorum.
§157.7. Classification of Pleadings.
§157.8. Form of Documents.
§157.9. Service of Documents.
§157.10. Filing of Documents.
§157.11. Notice of Intent.
§157.12. Answer and Request for Hearing.
§157.13. Prehearing Conference.
§157.14. Discovery.
§157.15. Motions for Continuance.
§157.16. Dismissal Without a Hearing; Nonsuits.
§157.17. Order of Procedure at Hearing.
§157.18. Filing of Exceptions and Replies to Proposal for Decision.
§157.19. Board Consideration and Adoption of Proposal for Decision.
§157.20. Motions for Rehearing.

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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Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
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19 TAC §§157.1 - 157.4

The new sections are proposed under the Texas Education Code (TEC), §31.151, which authorizes the State Board of Education to adopt rules to provide for a hearing to determine administrative penalties for violations of textbook requirements.

The new sections implement the Texas Education Code, §31.151.

§157.1. Scope and Purpose.

This subchapter shall govern the proceedings in all contested cases before the State Board of Education where:

(1) notice and opportunity for hearing is expressly required by other law; and

(2) the hearing is not exempted from the provisions of the Administrative Procedure Act (APA) (Texas Government Code, Chapter 2001).

§157.2. Request for Hearing; Transfer to State Office of Administrative Hearings.

(a) All proceedings under §157.1 of this title (relating to Scope and Purpose) shall be heard by the State Office of Administrative Hearings, pursuant to the procedures set forth in 1 TAC Chapter 155 (relating to Rules of Procedures).

(b) In cases in which the Texas Education Agency is not the petitioner, petitions for review or requests for hearing shall be filed with the State Board of Education (SBOE) within 30 calendar days after the decision, order, or ruling complained of is first communicated to the petitioner, except as otherwise provided by law or SBOE rule.

§157.3. Board Consideration and Adoption of Proposal for Decision.

(a) After the time for filing exceptions and replies to exceptions expires, the State Board of Education (SBOE) shall consider the proposal for decision and any exceptions and replies in public session, and shall enter a written decision adopting or modifying and adopting the proposed decision or remanding the matter to the State Office of Administrative Hearings for further proceedings.

(b) No public testimony shall be heard on the question of adopting, modifying, or remanding the proposal for decision. No information other than the record of the proceedings conducted by the administrative law judge, the proposal for decision, and the exceptions and replies of the parties shall be heard, considered, or discussed by the SBOE concerning the contested case.

(c) All final decisions or orders of the SBOE shall be in writing and signed by the chair, if voting in favor of the decision, or by a member selected by those voting in favor of the decision. A final decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(d) The decision of the SBOE may incorporate by reference the proposal for decision in whole or in part, and such incorporation by reference may constitute compliance with subsection (c) of this section. If the decision of the SBOE modifies the proposal for decision in any respect, the SBOE shall specify the portions modified and shall set out in full the affected language as modified by the decision of the SBOE.

(e) Party representatives shall be simultaneously notified either personally, by facsimile transmission, or overnight courier of each decision or order. For purposes of §157.4 of this title (relating to Motions for Rehearing), a party present at a meeting of the SBOE at which a public vote is taken shall be deemed notified of the decision or order on the date of the vote.

§157.4. Motions for Rehearing.

(a) In the absence of a finding of imminent peril, a motion for rehearing is a prerequisite to a judicial appeal.

(b) Motions for rehearing will be in conformance with the Texas Government Code, §2001.146.

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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Cristina De La Fuente-Valadez
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Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 461. GENERAL RULINGS

22 TAC §461.11

The Texas State Board of Examiners of Psychologists proposes amendments to §461.11, concerning Continuing Education. These amendments are being proposed to allow licensees to use continuing education obtained in the last month of the renewal period towards compliance for the next renewal period.

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

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

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

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

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

§461.11. Continuing Education.

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

(c) Permitted activities.

(1) Continuing education hours may be obtained by participating in one or more of the following activities, provided that the specific activity may not be used for credit more than once:

(A) attendance or participation in a formal continuing education activity for which continuing education hours have been preassigned by a provider;

(B) teaching or attendance as an officially enrolled student in a graduate level course in psychology at a regionally accredited institution of higher education;

(C) presentation of a program or workshop; and

(D) authoring or editing publications.

(2) Providers include:

(A) national, regional, state, or local psychological associations; or

(B) other formally organized groups providing continuing education that is directly related to the practice of psychology. Examples of such providers include: public or private institutions, professional associations, and training institutes devoted to the study or practice of particular areas or fields of psychology; professional associations relating to other mental health professions such as psychiatry, counseling, or social work; state or federal agencies; and regional service centers for public school districts.

(3) Credits will be provided as follows:

(A) For attendance at formal continuing education activities, the number of hours pre-assigned by the provider.

(B) For teaching or attendance of a graduate level psychology course, four hours per credit hour. A particular course may not be taught or attended by a licensee for continuing education credit more than once.

(C) For presentations of workshops or programs, three hours for each hour actually presented, for a maximum of six hours per year. A particular workshop or presentation topic may not be utilized for continuing education credit more than once.

(D) For publications, eight hours for authoring or co-authoring a book; six hours for editing a book; four hours for authoring a published article or book chapter. A maximum credit of eight hours for publication is permitted for any one year.

(4) [~~When obtained, any submitted~~] Continuing education hours must have been obtained during the 12 months prior to the renewal period for which they are submitted. If the hours were obtained during the license renewal month and are not needed for compliance for that year, they may be submitted the following year to meet that year's continuing education requirements.

(d)-(f) (No change.)

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307984
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 305-7700

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CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.9

The Texas State Board of Examiners of Psychologists proposes amendments to §463.9, concerning Licensed Specialist in School Psychology. These amendments are being proposed to clarify requirements and qualifications for licensure as a specialist in school psychology.

Sherry L. Lee, Executive Director, has determined that for the first five-year period the rule is in effect there will be no fiscal

implications for state or local government as a result of enforcing or administering the rule.

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

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

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

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

§463.9. Licensed Specialist in School Psychology.

(a) (No change.)

(b) Training Qualifications. Candidates for licensure as a specialist in school psychology who hold a currently valid National Certified School Psychologist (NCSP) certification or who have graduated from a training program approved by the National Association of School Psychologists or accredited in School Psychology by the American Psychological Association will be considered to have met the training and internship qualifications. All other applicants must have completed a graduate degree in psychology from a regionally accredited academic institution, no more than 12 of which may be internship hours. All 60 hours do not have to be obtained prior to the conferral of the graduate degree and the applicant need not be formally enrolled in a psychology program to obtain graduate hours after the degree date. For purposes of this rule, a graduate degree in psychology means the name of the candidate's major or program of studies must be titled psychology. These applicants must submit evidence of graduate level coursework as follows:

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

(3) Educational Foundation; including any of the following:

(A) instructional design;

(B) organization and operation of schools;

(C) classroom management; or

(D) educational administration.

(4)-(7) (No change.)

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

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

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

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CHAPTER 471. RENEWALS

22 TAC §471.1

The Texas State Board of Examiners of Psychologists proposes amendments to §471.1, concerning Notification of Renewal. These amendments are being proposed to clearly inform licensees that annual renewal is their responsibility.

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

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

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

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

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

§471.1. Notification of Renewal.

All licenses issued by the Board shall be subject to annual renewal. Annual renewals are due on the last day of each person's birth month. Persons whose licensure is about to expire shall be notified once by regular mail at least 30 days before the last day of their birth month each year and shall be notified by certified mail if they fail to renew by the last day of their birth month. The second notice will not be mailed prior to the last day of their birth month. Failure of the licensee to receive the Board's renewal form is not an acceptable excuse for failure to renew a license by the expiration date.

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

Filed with the Office of the Secretary of State on November 19, 2003.

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Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

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For further information, please call: (512) 305-7700

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TITLE 25. HEALTH SERVICES

PART 1. TEXAS DEPARTMENT OF HEALTH

CHAPTER 97. COMMUNICABLE DISEASES
SUBCHAPTER B. IMMUNIZATION REQUIREMENTS IN TEXAS ELEMENTARY AND SECONDARY SCHOOLS AND INSTITUTIONS OF HIGHER EDUCATION

The Texas Department of Health (department) proposes the repeal of §§97.61 - 97.63, 97.65, 97.67, 97.71 - 97.77 and new §§97.61 - 97.72, concerning immunization requirements for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education.

Specifically, the repeals and new sections allow for a simplification of the existing rules governing the immunization requirements for Texas children and students. The proposal will make the rules more accessible, understandable, and usable. The department's main goal is to enhance the effectiveness of the immunization requirements for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education. To accomplish this, the proposed new rules simplify the process of implementing and tracking compliance of the immunization requirements for Texas children and students.

Government Code, §2001.039, requires that each state agency conduct a review of its rules every four years and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). The department has reviewed §§97.61 - 97.63, 97.65, 97.67, 97.71 - 97.77, and has determined that reasons for adopting the sections continue to exist; however, a repeal of the current sections and the proposed new sections are necessary to make the rules more accessible, understandable, and usable.

The department published a Notice of Intention to Review for §§97.61 - 97.63, 97.65, 97.67, 97.71 - 97.77, in the *Texas Register* on January 14, 2000 (25 TexReg 275). No comments were received due to publication of this notice.

Casey S. Blass, Chief, Bureau Immunization and Pharmacy Support, has determined that for each year of the first five years that the sections will be in effect there will be no fiscal implications to state or local government as a result of enforcing and administering the sections as proposed. These rules update the immunization requirements for Texas children and students; however, this update does not require additional immunizations not on the current recommended immunization schedule.

Mr. Blass has also determined that for each year of the first five years that the sections are in effect the public benefit anticipated as a result of enforcing and administering the sections as proposed will emerge as an increase in the immunization compliance rate of Texas children who attend schools and child-care facilities. No impact on micro-businesses or small businesses is expected because the cost for implementing the acceleration of the varicella vaccination requirement and the additional requirement of polio vaccination for students effective August 1, 2004, will be covered by parents and insurance companies. The expected fiscal impact on parents is minimal. The varicella vaccination requirement for all students effective August 1, 2004, is expected to have minimal fiscal impact on parents because the majority of students are considered immune to varicella disease. The polio vaccination requirement for students is expected to have minimal fiscal impact because this change does not require additional immunizations not on the current immunization schedule. There will be no impact on local employment.

The rules are being revised in order to update the immunization requirements and make them more consistent with the Centers for Disease Control and Prevention's (CDC's) Advisory Committee on Immunization Practices (ACIP), Recommended Childhood and Adolescent Immunization Schedule. Previous implementation of a new vaccine requirement was specified for kindergarten enrollees and students twelve years of age at the time the new requirement was initiated. This age criteria made it difficult for school nurses to determine when a child was required to show proof of a specific number of doses for any required vaccine. The department's proposed new rules should increase the clarity and effectiveness of the immunization requirements because the new rules apply to specific grade levels instead of specific age groups.

These proposed rules will accelerate the requirement of varicella vaccination for all students. The existing requirement for varicella applies to the majority of students, but not all students. These proposed rules expand the requirement for polio vaccination for students to be consistent with the current recommended vaccination schedule.

Comments may be submitted to Janie Garcia, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, (512) 458-7284, or (800) 252-9152. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The rules will become effective on August 1, 2004.

25 TAC §§97.61 - 97.63, 97.65, 97.67, 97.71 - 97.77

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

The repeals are proposed under Health and Safety Code, §81.023, which requires the Board of Health (board) to develop immunization requirements for children; the immunization requirements are a statewide control measure for communicable disease as defined in Health and Safety Code, §81.081 and §81.082. The requirements are stipulated as an "instruction" of the department as that term is used in the Texas Health and Safety Code, §81.002; Education Code, §38.001, which allows the board to develop immunization requirements for admission to any elementary or secondary school; Education Code, §51.933, which allows the board to develop immunization requirements for students at any institution of higher education who are pursuing a course of study in a health profession; Human Resources Code, §42.043, which requires the department to make rules regarding the immunization of children admitted to child-care facilities; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The repeals affect Health and Safety Code, §81.023; Texas Education Code, §38.001 and §51.933; and Human Resource Code, §42.043.

§97.61. Children and Students Included in Requirements.

§97.62. Exclusions from Compliance.

§97.63. Required Immunizations.

§97.65. Pregnancy.

§97.67. Verification of Immunity to Measles, Rubella, Mumps, Hepatitis A, Hepatitis B, or Varicella.

§97.71. Provisional Enrollment.

§97.72. School Records.

§97.73. Acceptable Documents of Immunizations.

§97.74. Transfer of Records.

§97.75. Assistance and Review of Records.

§97.76. Annual Report of Immunization Status.

§97.77. Remarks and Special Recommendations.

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308037
Susan K. Steeg
General Counsel
Texas Department of Health
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 458-7236

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25 TAC §§97.61 - 97.72

The new sections are proposed under Health and Safety Code, §81.023, which requires the Board of Health (board) to develop immunization requirements for children; the immunization requirements are a statewide control measure for communicable disease as defined in Health and Safety Code, §81.081 and §81.082. The requirements are stipulated as an "instruction" of the department as that term is used in the Texas Health and Safety Code, §81.002; Education Code, §38.001, which allows the board to develop immunization requirements for admission to any elementary or secondary school; Education Code, §51.933, which allows the board to develop immunization requirements for students at any institution of higher education who are pursuing a course of study in a health profession; Human Resources Code, §42.043, which requires the department to make rules regarding the immunization of children admitted to child-care facilities; and Health and Safety Code, §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department, and the commissioner of health.

The new sections affect Health and Safety Code, §81.023; Texas Education Code, §38.001 and §51.933; and Human Resource Code, §42.043.

§97.61. Children and Students Included in Requirements.

(a) The vaccine requirements apply to all children and students entering, attending, enrolling in, and/or transferring to child-care facilities or public or private primary or secondary schools or institutions of higher education.

(b) The vaccines required in this section are also required for all children in the State of Texas, including children admitted, detained, or committed in Texas Department of Criminal Justice, Texas Mental Health and Mental Retardation, and Texas Youth Commission facilities.

(c) The vaccine requirements are adopted as a statewide control measure for communicable disease as defined in Health and Safety Code, §81.081 and §81.082. The requirements are adopted as an "instruction" of the department as that term is used in the Health and Safety Code, §81.002.

§97.62. Exclusions from Compliance.

Exclusions from compliance are allowable on an individual basis for medical contraindications, reasons of conscience, including a religious belief, and active duty with the armed forces of the United States. Children and students in these categories must submit evidence for exclusion from compliance as specified in the Education Code, Chapter 38, and the Human Resources Code, Chapter 42.

(1) Medical contraindications. The child or student must present a statement signed by the child's physician (M.D. or D.O.), duly registered and licensed to practice medicine in the United States who has examined the child, in which it is stated that, in the physician's opinion, the vaccine required is medically contraindicated or poses a significant risk to the health and well-being of the child or any member of the child's household.

(2) Reasons of conscience, including a religious belief. A signed affidavit must be presented by the child's parent or guardian, stating that the child's parent declines vaccinations for reasons of conscience, including because of the person's religious beliefs. The affidavit will be valid for a five-year period. The child, who has not received the required immunizations for reasons of conscience, including religious beliefs, may be excluded from school in times of emergency or epidemic declared by the commissioner of public health.

(3) A person claiming exclusion for reasons of conscience, including a religious belief, from a required immunization may only obtain the affidavit form by submitting a written request to the department. The request must include the following:

(A) full name of child;

(B) child's date of birth (month/day/year);

(C) written requests must be submitted through the United States Postal Service (or other commercial carrier) or by hand delivery to the department's Bureau of Immunization and Pharmacy Support, 1100 West 49th Street, Austin, Texas 78756;

(D) upon request, one form for each child will be mailed unless otherwise specified (shall not exceed a maximum of five forms per child);

(E) the department shall not maintain a record of the names of individuals who request an affidavit and shall return the original request with the forms requested.

(4) Armed forces. Persons who can prove that they are serving on active duty with the armed forces of the United States are exempted from the requirements in these sections.

§97.63. Required Immunizations.

Every child in the state shall be immunized against vaccine preventable diseases caused by infectious agents in accordance with the following immunization schedule.

(1) In accordance with the Texas Department of Health Immunization Schedule as informed by the Advisory Committee on Immunization Practices' (ACIP) recommendations and adopted by the

Texas Board of Health and published in the *Texas Register* annually, for all vaccines herein, vaccine doses administered less than or equal to four days before the minimum interval or age shall be counted as valid.

(2) A child or student shall show acceptable evidence of vaccination prior to entry, attendance, or transfer to a child-care facility or public or private elementary or secondary school, or institution of higher education.

(A) Children in child-care facilities shall have the following.

(i) Age-appropriate vaccination against diphtheria, pertussis, tetanus, poliomyelitis, *Haemophilus influenzae* type b, measles, mumps, rubella, hepatitis B, and varicella in accordance with the Texas Department of Health Immunization Schedule as informed by the Advisory Committee on Immunization Practices' (ACIP) recommendations and adopted by the Texas Board of Health and published in the *Texas Register* annually. A copy of the current schedule is available at www.ImmunizeTexas.com or by mail to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(ii) Hepatitis A. Age-appropriate vaccination against hepatitis A for children attending a child-care facility located in a high incidence geographic area as designated by the department. A list of geographic areas for which hepatitis A is mandated shall be published in the *Texas Register* on an annual basis and is available at www.ImmunizeTexas.com or by mail to the Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

(B) Students in kindergarten thru twelfth grade shall have the following vaccines.

(i) Poliomyelitis.

(I) Upon entry into kindergarten, students are required to have four doses of polio vaccine, one of which must have been received on or after the fourth birthday. Or, if the third dose was administered on or after the fourth birthday only three doses are required. If any combination of four doses of OPV and IPV was received before four years of age no additional dose is required.

(II) Polio vaccine is not required for persons eighteen years of age or older.

(ii) Diphtheria/Tetanus/Pertussis.

(I) Upon entry into kindergarten, students are required to have five doses of a diphtheria-tetanus-pertussis containing vaccine in any combination unless the fourth dose was received on or after the fourth birthday in which case only four doses are required.

(II) Students who started their vaccinations after age seven are required to have at least three doses of a tetanus-diphtheria containing vaccine. Any combination of three doses of a tetanus-diphtheria containing vaccine will meet this requirement. One dose of a tetanus-diphtheria containing vaccine is required within the last ten years.

(iii) Measles. Two doses of measles-containing vaccine are required. The first dose shall be administered on or after the first birthday.

(iv) Rubella. One dose of rubella vaccine received on or after the first birthday is required.

(v) Mumps. One dose of mumps vaccine received on or after the first birthday is required.

(vi) Hepatitis B.

(I) Three doses of hepatitis B vaccine are required.

(II) In some circumstances, the United States Food and Drug Administration may approve the use of an alternative dosage schedule for an existing vaccine. These alternative regimens may be used to meet this requirement only when alternative regimens are fully documented. Such documentation must include vaccine manufacturer and dosage received for each dose of that vaccine.

(vii) Varicella. One dose of varicella vaccine received on or after the first birthday is required (two doses are required if the child was 13 years old or older at the time the first dose of varicella vaccine was received).

(viii) Hepatitis A. Upon entry into kindergarten, two doses of hepatitis A vaccine are required for students attending a school located in a high incidence geographic area as designated by the department. The first dose shall be administered on or after the second birthday. A list of geographic areas for which hepatitis A is mandated shall be published in the *Texas Register* on an annual basis and is available at www.ImmunizeTexas.com, or by mail request at Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756.

§97.64. Required Vaccinations for Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

(a) This section applies to all students enrolled in health-related courses, which will involve direct patient contact in medical or dental care facilities. This includes all medical interns, residents, fellows, nursing students, and others who are being trained in medical schools, hospitals, and health science centers listed in the Texas Higher Education Coordinating Board's list of higher education in Texas; and students attending two-year and four-year colleges whose course work involves direct patient contact regardless of the number of courses taken, number of hours taken, and the classification of the student. Subsection (i) of this section also applies to veterinary medical students whose course work involves direct contact with animals or animal remains regardless of number of courses taken, number of hours taken, and the classification of the student.

(b) Students may be provisionally enrolled for up to one semester or one quarter to allow students to attend classes while obtaining the required vaccines and acceptable evidence of vaccination.

(c) Students cannot be provisionally enrolled without at least one dose of measles, mumps, and rubella vaccine if direct patient contact will occur during the provisional enrollment period.

(d) Polio vaccine is not required. Students enrolled in health-related courses are encouraged to ascertain that they are immune to poliomyelitis.

(e) One dose of tetanus-diphtheria toxoid (Td) is required within the last ten years.

(f) Students who were born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of two doses of measles-containing vaccine administered since January 1, 1968.

(g) Students must show, prior to patient contact, acceptable evidence of vaccination of one dose of rubella vaccine.

(h) Students born on or after January 1, 1957, must show, prior to patient contact, acceptable evidence of vaccination of one dose of mumps vaccine.

(i) Students shall receive a complete series of hepatitis B vaccine prior to the start of direct patient care or show serologic confirmation of immunity to hepatitis B virus.

(j) Students enrolled in schools of veterinary medicine shall receive a complete primary series of rabies vaccine prior to the start of contact with animals or their remains; and, a booster dose of rabies vaccine every two years unless protective serum antibody levels are documented.

(k) Students shall receive two doses of varicella vaccine unless the first dose was received prior to thirteen years of age.

§97.65. Exceptions to Immunization Requirement (Verification of Immunity/History of Illness).

(a) Serologic confirmations of immunity to measles, rubella, mumps, hepatitis A, hepatitis B, or varicella, are acceptable. Evidence of measles, rubella, mumps, hepatitis A, or hepatitis B, or varicella illnesses must consist of a laboratory report that indicates either confirmation of immunity or infection.

(b) A parent or physician validated history of varicella disease (chickenpox) or varicella immunity is acceptable in lieu of vaccine. A written statement from a physician, or the student's parent or guardian, or school nurse, must support histories of varicella disease.

§97.66. Provisional Enrollment.

(a) The law requires that students be fully vaccinated against the specified diseases. A student may be enrolled provisionally if the student has an immunization record that indicates the student has received at least one dose of each specified age-appropriate vaccine required by this rule. To remain enrolled, the student must complete the required subsequent doses in each vaccine series on schedule and as rapidly as is medically feasible and provide acceptable evidence of vaccination to the school. A school nurse or school administrator shall review the immunization status of a provisionally enrolled student every 30 days to ensure continued compliance in completing the required doses of vaccination. If, at the end of the 30-day period, a student has not received a subsequent dose of vaccine, the student is not in compliance and the school shall exclude the student from school attendance until the required dose is administered.

(b) A student who is homeless, as defined by §103 of the McKinney Act, 42 USC §11302, shall be admitted temporarily for 30 days if acceptable evidence of vaccination is not available. The school shall promptly refer the student to appropriate public health programs to obtain the required vaccinations.

§97.67. School Records.

All schools and child-care facilities are required to maintain immunization records sufficient for a valid audit to be completed.

§97.68. Acceptable Evidence of Vaccination.

(a) Vaccines administered after September 1, 1991, shall include the month, day, and year each vaccine was administered.

(b) Documentation of vaccines administered that include the signature or stamp of the physician or his/her designee, or public health personnel is acceptable.

(c) An official immunization record generated from a state or local health authority, such as a registry, is acceptable.

(d) A record received from school officials of another state is acceptable.

§97.69. Transfer of Records.

A student can be enrolled provisionally for no more than 30 days if he/she transfers from one Texas school to another, and is awaiting the transfer of the immunization record.

§97.70. Review of Records and Assistance.

Representatives of the department and local health authorities may advise and assist schools in meeting these requirements. The department shall conduct periodic review of de-identified school immunization records in order to allow public health officials to obtain information required for public health purposes.

§97.71. Annual Report of Immunization Status.

Schools shall submit annual reports of the immunization status of students, in a format prescribed by the department, to monitor compliance with these requirements. Results may be published by the department in cooperation with the Texas Education Agency and other accrediting agencies.

§97.72. Vaccine-Preventable Disease Outbreaks.

In the event of an outbreak of vaccine-preventable disease, the local health authority may require or recommend additional doses or boosters to provide further protection.

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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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (512) 458-7236

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 285. ON-SITE SEWAGE FACILITIES
SUBCHAPTER D. PLANNING, CONSTRUCTION, AND INSTALLATION STANDARDS FOR OSSFS

30 TAC §285.37, §285.39

The Texas Commission on Environmental Quality (commission) proposes new §285.37 and an amendment to §285.39.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULES

On June 2, 2002, the commission received a petition for rulemaking from the Texas Water Quality Association. The petitioner requested that the commission review §285.39 and consider changing this rule to allow back flush from water softeners and reverse osmosis systems to enter an on-site sewage facility (OSSF) under certain conditions. The petition was based on rules the commission adopted in May 2001. On August 24, 2002, the commission approved the Texas Water Quality Association's petition for rulemaking. Action on this petition was put on hold because Senate Bill (SB) 1633 from the 78th Legislature, 2003 involved the same issue.

Texas Health and Safety Code, §366.013, was added by SB 1633 to give owners the ability to discharge back flush from

water softeners or reverse osmosis systems into an OSSF provided that certain conditions are met. Water softeners must conserve water by design, regenerate using a demand-initiated regeneration (DIR) control device, and be clearly labeled as being equipped with a DIR device. Point-of-entry reverse osmosis systems must not cause hydraulic overloading or hydraulic loading must be adequately addressed in the design of the OSSF. Section 366.013 allows point-of-use reverse osmosis systems without any conditions and allows the continued use of water softeners installed before September 1, 2003, that discharge into OSSFs unless the owner replaces the water softener or installs a new OSSF. SB 1633 requires rules to be adopted by June 1, 2004.

SECTION BY SECTION DISCUSSION

Proposed §285.37 provides a definition of water treatment equipment; requirements for installation and use of water softeners, reverse osmosis systems, and other water treatment equipment in facilities that use OSSFs for wastewater treatment and disposal; and the requirement for an airgap or airgap device between the water treatment equipment and the OSSF.

The proposed definition of water treatment equipment is consistent with 30 TAC §30.267(3).

Proposed §285.37(b) provides the requirements for use of water softeners, reverse osmosis systems, and other water treatment equipment discharging into a facility with an OSSF on or after September 1, 2003.

Proposed §285.37(b)(1)(A) adds language from SB 1633 that requires a water softener to regenerate using a demand-initiated regeneration (DIR) control device and that requires the water softener to be clearly labeled as being equipped with a DIR device. Clause (i) includes the language from SB 1633 that requires the label to be affixed to the outside of the water softener so that the label can be easily inspected and read. Clause (ii) requires that the label include the name of the company that installed the water softener. This provides the owner with a contact if there are problems with the unit.

Proposed §285.37(b)(1)(B) adds language from SB 1633 that specifies that a water softener may only be connected to an OSSF with a nonstandard or proprietary treatment system as described in §285.32(c) and (d), provided the water softener drain line is connected to specific parts of the OSSF system. Clause (i) includes language from SB 1633 that requires that the drain line bypass the treatment system. Clause (ii) includes language from SB 1633 that requires the drain line to connect directly to a pump tank or directly to the line between the treatment system and the disposal system. It also requires that the connection must be to the pump tank if the OSSF has a pump tank or to the pipe between the treatment system and the disposal system if no pump tank exists. This provides additional dilution to the water discharged from the water softener to prevent potential clogging of the disposal system.

Proposed §285.37(b)(1)(C) includes language from SB 1633 that allows an owner to continue to use a water softener that discharges to an OSSF and that does not meet the requirements of §285.37(b)(1)(A) if the water softener was installed before September 1, 2003. Subparagraph (C) also includes language from SB 1633 that requires an owner to replace a water softener installed before September 1, 2003, with a water softener that meets the requirements of subparagraph (A) if the specified criteria are met. Clause (i) includes language from SB 1633 that requires an owner to use a water softener that meets the requirements of subparagraph (A) if an owner replaces the existing water softener. Clause (ii) includes language from SB 1633 that requires an owner to replace an existing water softener with a water softener that meets the requirements of subparagraph (A) if an owner or installer installs, alters, constructs, or repairs an OSSF for the building or property served by the existing water softener.

Proposed §285.37(b)(2)(A) includes language from SB 1633 that allows an owner to install and use a point-of-use (under sink unit) reverse osmosis system with an OSSF without including calculations of the increased water volume for the OSSF system in the planning materials.

Proposed §285.37(b)(2)(B) includes language from SB 1633 that allows back flush from a point-of-entry (whole house unit) reverse osmosis system to be discharged into an OSSF if certain conditions are met. Clauses (i) and (ii) include the language from SB 1633 that requires the owner to either demonstrate that the point-of-entry reverse osmosis system does not cause hydraulic overloading of the OSSF or to address the increased water volume from the system in the wastewater usage rates in 30 TAC §285.91(3) and include the increased volume in the planning materials for the OSSF.

Proposed §285.37(b)(3) allows owners who use water treatment equipment other than water softeners or reverse osmosis systems to discharge back flush from this equipment, provided that the increased water volume is added to the OSSF wastewater usage rates in §285.91(3), and that the water volume calculation is included in the planning materials for the OSSF. Other types of water treatment equipment besides water softeners and reverse osmosis systems are currently available. These could also result in a back flush of large volumes of water into the OSSF, creating a hydraulic overload of the OSSF system. The proposed language will require that any increase in water volume from other water treatment equipment be included in the wastewater usage rates for the OSSF. This allows the OSSF to be designed for the increase in flow to help prevent system failure.

Proposed §285.37(c) requires that discharges from all water treatment equipment enter the OSSF system through an airgap or airgap device as required in the Uniform Plumbing Code (2000). This prevents sewage from the OSSF from backing up and contaminating the water supply system.

Existing §285.39(d) is proposed to be deleted. SB 1633 allows the installation and use of water softeners and reverse osmosis systems in facilities that have an OSSF, which is inconsistent with the language in this subsection.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jan Washburn, Analyst in the Strategic Planning and Appropriations Section, determined that for the first five years that the proposed rules will be in effect, there will be no significant fiscal impact to either the state or local governments as these rules only affect residences with OSSFs.

Ms. Washburn also determined that during the first five years the proposed rules are in effect, the public benefit anticipated is that residents whose homes have septic systems will be able to install water softeners or reverse osmosis water conditioning systems. Currently, installation of this equipment in houses with a septic system is not authorized by agency rule.

The use of water treatment equipment is not required by statute or rule. Any cost from purchasing and/or installing these systems is voluntarily incurred. However, as of September 1, 2003, for individuals with existing water softener systems that will be replaced or an OSSF, that is connected to an existing water softener, that will be replaced, there is a cost to comply with these rules. SB 1633, 78th Legislature, 2003 requires that anyone replacing an existing softener or replacing the OSSF serving the property must purchase a softener with a DIR control device. Water softeners must be routinely flushed to remove the chemicals or impurities taken out of the water. The timing of the regeneration process is controlled by either a clock timer that automatically flushes the system on a regular timed basis, or a meter (like a DIR control device) that measures the amount of water that has been treated and flushes only after the prescribed amount of water has been treated. A DIR control device saves water as compared to timer controlled devices because it only runs when it is needed. In general, a water softener with a DIR control device costs an average of $200 more than one controlled by a timer. Likewise, to upgrade a timer softener to a DIR controlled softener also costs approximately $200. In these instances, there would be an increased cost of approximately $200 per residence to comply with the proposed rulemaking.

It is not known how many residential OSSF systems exist in the state. 40,000 - 50,000 permits are issued every year by state and local authorities. It is also not known how many houses have water softeners. However, if existing water softeners are replaced, these replacements must be the more expensive DIR models. A water softener's life expectancy varies by brand and ranges from three to five years to up to 15 years. With a life expectancy of from three to five years, a significant number of water softeners many need to be upgraded during the first five years these rules are in effect. While the total dollar impact cannot be estimated, it can be estimated that each water softener that is upgraded will cost $200 more to purchase in order to comply with these rules. Water softeners range in cost from $600 to $2,000.

Water softener vendors suggest that these more expensive softeners will pay for themselves, as they may use less water. Flushing the softener uses from 50 - 150 gallons of water per flush, depending on the size of the system and the hardness of the water. Flushing may occur one to three times per week.

These rules do not address upgrades to reverse osmosis systems; therefore, there is not a cost to individuals to comply with these portions of the rules. These proposed rules do specify that if a point-of-entry system is installed, the drain field must be sized to handle the increased water usage, thereby increasing the cost of the OSSF system. Point-of-entry reverse osmosis systems are expensive, $10,000 to $12,000, and are rarely installed. The more common reverse osmosis system is a point-of-use system, generally installed in the kitchen.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

There are no anticipated costs for small and microbusinesses as a result of these proposed rules. Rather, these businesses will now be able to sell water softeners and reverse osmosis systems for residential use with an OSSF, potentially increasing their revenue base.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Major environmental rule means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of this proposal is to implement legislation which allows back flush from water softener, reverse osmosis, and other water treatment equipment to enter an OSSF under certain conditions, and to repeal existing language which is contradictory. This proposal does not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

In addition, the proposed rules are not subject to Texas Government Code, §2001.0225, because they do not meet the four criteria specified in §2001.0225(a). Section 2001.0225(a) applies to a rule adopted by an agency, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. The proposed rules do not meet any of these requirements. First, these revisions do not exceed a standard set by federal law as there are no federal requirements for the use of water treatment equipment with OSSFs. As a result, there are no applicable standards set by federal law that could be exceeded by these rules. Second, these proposed rules do not exceed an express requirement of state law, but are being proposed to implement state law. Therefore, the rulemaking does not exceed an express requirement of state law. Third, the commission is not a party to a delegation agreement with the federal government concerning a state and federal program that would be applicable to requirements set forth in these rules. Therefore, there are no delegation agreement requirements that could be exceeded by these rules. Fourth, this proposed rulemaking does not adopt a rule solely under the general powers of the commission. The requirements that would be implemented through these rules are specified in Texas Health and Safety Code, Chapter 366, which requires the commission to enact rules governing the installation of OSSFs. Therefore, the commission does not propose these rules solely under the commission's general powers. Thus, a regulatory analysis is not required because the proposed rules do not meet the criteria of a major environmental rule contained in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The commission performed an assessment of these rules in accordance with Texas Government Code, §2007.043. The purpose of this rulemaking is to delete existing §285.39(d), which prohibits owners from allowing water softener and reverse osmosis back flush from entering into any portion of the OSSF and replace it with proposed new §285.37, which will allow back flush from water treatment equipment to enter an OSSF under certain conditions. Promulgation and enforcement of these rules would be neither a statutory nor a constitutional taking because they do not adversely affect private real property. The rulemaking does not affect private property in a manner that restricts or

limits an owner's right to the property that would otherwise exist in the absence of a governmental action. Texas Government Code, Chapter 2007 does not apply to this rulemaking because the promulgation and enforcement of these rules will not create a burden on private real property.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.*, and therefore must be consistent with all applicable CMP goals and policies. The commission prepared a preliminary consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found that the proposed rulemaking is consistent with the applicable CMP goals and policies.

The generally applicable goals of the CMP are: to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; to ensure and enhance planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone; and to balance these competing interests. This rulemaking, applicable to all areas of the state, will comply with these goals of the CMP.

The applicable CMP policy states that rules governing OSSFs require those systems to be located, designed, operated, inspected, and maintained so as to prevent a release of pollutants that may adversely affect coastal waters. Promulgation and enforcement of these proposed rules will not violate any standards identified in the applicable CMP policy because the proposed rules only allow owners of OSSFs to allow back flush from water treatment equipment to enter their OSSF under certain specified conditions that are intended to be protective.

The commission seeks public comment on the consistency of the proposed rules with applicable CMP goals and policies.

ANNOUNCEMENT OF HEARING

A public hearing on this proposal will be held in Austin on January 8, 2004, at 10:30 a.m. in Building C, Room 131E, at the Texas Commission on Environmental Quality complex, located at 12100 Park 35 Circle. Individuals may present oral or written statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs, who are planning to attend the hearing, should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

SUBMITTAL OF COMMENTS

Comments may be submitted to Patricia Durón, MC 205, Office of Environmental Policy, Analysis, and Assessment, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-057-285-WT. Comments must be received by 5:00 p.m., January 12, 2004. For further information, please contact Emily Barrett, Regulation Development Section, at (512) 239-3546.

STATUTORY AUTHORITY

The new and amended sections are proposed under the authority granted to the commission by the Texas Legislature in Texas Health and Safety Code, §366.001 and 366.011. Specific statutory authorization derives from Texas Health and Safety Code, §366.013 as added by SB 1633, 78th Legislature, 2003. The new and amended section are also proposed under the general authority granted in Texas Water Code, §5.013, which establishes the general jurisdiction of the commission over other areas of responsibility as assigned to the commission under the Texas Water Code and other laws of the state; Texas Water Code, §5.103 and §5.105, which authorize the commission to adopt rules and policies necessary to carry out its responsibilities and duties under the Texas Water Code, §5.013(14)(b); and Texas Water Code, §7.002, which authorizes the commission to enforce provisions of the Texas Water Code and Texas Health and Safety Code.

The new and amended sections implement Texas Health and Safety Code, §366.012(a)(1), which requires the commission to adopt rules consistent with the policy defined in Texas Health and Safety Code, §366.001; and §366.013, relating to Installation and Use of Water Softeners and Reverse Osmosis Systems.

§285.37. On-Site Sewage Facilities and Water Treatment Equipment and Appliances.

(a) Water treatment equipment is defined as an appliance, which includes water softeners and reverse osmosis systems, used to:

(1) alter the mineral content of water;

(2) alter the microbiological content of water;

(3) alter other substances found in water; or

(4) purify water.

(b) Back flush or discharge from water treatment equipment installed on or after September 1, 2003, may be discharged into an on-site sewage facility (OSSF) as provided in this subsection.

(1) Water softener.

(A) The water softener must regenerate using a demand-initiated regeneration (DIR) control device. The water softener must be clearly labeled as being equipped with a DIR control device as follows:

(i) the label shall be affixed to the outside of the water softener so the label can be easily inspected and read; and

(ii) the label shall provide the name of the company that installed the water softener.

(B) A water softener may only be connected to an OSSF with a non-standard or proprietary treatment system as described in §285.32(c) and (d) of this title (relating to Criteria for Sewage Treatment Systems) if the water softener drain line:

(i) bypasses the treatment system; and

(ii) connects directly to a pump tank if the OSSF has a pump tank or directly to the pipe between the treatment system and the disposal system if no pump tank exists.

(C) An owner may continue to use a water softener that discharges to an OSSF and does not meet the requirements of subparagraph (A) of this paragraph if the water softener was installed before September 1, 2003. An owner must replace any water softener installed before September 1, 2003, with a water softener that meets the requirements of subparagraphs (A) and (B) of this paragraph at such time as:

(i) an owner replaces the existing water softener; or

(ii) an owner or installer installs, alters, constructs, or repairs an OSSF for the structure or property served by the existing water softener.

(2) Reverse osmosis system.

(A) Point-of-use (under sink unit) reverse osmosis systems. The back flush from a point- of-use reverse osmosis system may be discharged into an OSSF without including calculations of the back flush water volume in the OSSF planning materials.

(B) Point-of-entry (whole house unit) reverse osmosis systems. The back flush from a point-of-entry reverse osmosis system may be discharged into an OSSF if:

(i) the owner can demonstrate that the point-of-entry reverse osmosis system does not cause hydraulic overloading of the OSSF; or

(ii) the water volume from the point-of-entry reverse osmosis system is accounted for (added to the usage rate in §285.91(3) of this title (relating to Tables)) by providing calculations of the increase in wastewater volume with the OSSF planning materials.

(3) Water treatment equipment other than water softeners and reverse osmosis systems. If an owner uses water treatment equipment other than water softeners or reverse osmosis systems, the back flush from the water treatment equipment may be discharged into an OSSF if the water volume is added to the OSSF usage rate in §285.91(3) of this title. This water volume calculation must be provided with the OSSF planning materials.

(c) Discharges from all water treatment equipment shall enter the OSSF system through an airgap or an airgap device as required in the Uniform Plumbing Code (2000).

§285.39. On-Site Sewage Facilities [~~OSSF~~] Maintenance and Management Practices.

(a) An installer shall provide the owner of an on-site sewage facility (OSSF) [~~OSSF~~] with written information regarding maintenance and management practices and water conservation measures related to the OSSF installed, repaired, or maintained[~~,~~] by the installer.

(b) Owners shall have the treatment tanks pumped on a regular basis[~~,~~] in order to prevent sludge accumulation from spilling over to the next tank or the outlet device. Owners of treatment tanks shall engage only persons registered with the executive director to transport the treatment tank contents.

(c) Owners shall not allow driveways, storage buildings, or other structures to be constructed over the treatment or disposal systems.

[~~(d) Owners shall not allow water softener and reverse osmosis back flush to enter into any portion of the OSSF.~~]

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308029
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 239-6087

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER K. HAZARDOUS SUBSTANCE FACILITIES ASSESSMENT AND REMEDIATION

30 TAC §335.347

The Texas Commission on Environmental Quality (commission) proposes an amendment to §335.347.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED RULE

The commission proposes these revisions to Chapter 335 to implement legislation from the 78th Legislature, 2003.

House Bill (HB) 2252 amended Texas Health and Safety Code (THSC), Chapter 361 (also known as the Solid Waste Disposal Act), Subchapter F, Registry and Cleanup of Certain Hazardous Waste Facilities. THSC, §361.181(c) was amended to add a definition of "homestead." THSC, §361.194(b) was amended to allow the executive director to consider a landowner's financial ability to satisfy a lien in determining whether to prepare a lien affidavit or whether a lien is satisfied, including whether the landowner received financial compensation for the disposal of the substance addressed by the remedial action and whether the real property that is the subject of the lien is a homestead with a fair market value of $250,000 or less. THSC, §361.197 was amended by the addition of new subsection (e), which prohibits the commission from filing a cost recovery action under that section against an individual whose only significant asset is a homestead that includes the facility that is subject to, or affected by, a remedial action, that is occupied by the individual as a home, and that has a fair market value of $250,000 or less. THSC, §361.201 was amended by the addition of new subsections (d) and (e) which require, in cases where an individual's homestead includes the facility that is subject to, or affected by, a remedial action, that the commission adopt criteria by rule to determine whether the individual is financially capable of conducting any necessary remediation studies or remedial action and that the rule must provide that the individual's homestead may not be included in the total amount of the individual's assets if the homestead is occupied by the individual as a home and has a fair market value of $250,000 or less.

SECTION DISCUSSION

The proposed amendment to §335.347 places existing rule language into a new subsection (a) and adds new subsections (b) - (g) to address the requirements of HB 2252. In subsection (a)(8) the commission changed the words "pursuant to" to "under" to comply with agency rule writing standards. The title of §335.347 is changed to better describe the information proposed to be included in the section.

Proposed new §335.347(b) includes provisions from new THSC, §361.201(d) and (e). The new provisions in §335.347(b) require that the executive director make a determination of the potentially responsible party's financial capacity if the party is an individual whose homestead includes the facility subject to, or affected by, a remedial action. The proposed new §335.347(b) prohibits the agency from including the value of an individual's homestead in the total amount of the individual's assets if the individual is occupying the homestead as a home and the fair market value of the homestead is $250,000 or less.

Proposed new §335.347(c) includes provisions from new THSC, §361.194(b)(2). These provisions cover new criteria that the executive director may consider in determining whether to prepare an affidavit to attach a lien to real property or whether a lien is satisfied.

Proposed new §335.347(d) includes provisions from new THSC, §361.197(e). These provisions prohibit the commission from filing a cost recovery action under specified circumstances.

Proposed new §335.347(e) addresses how the fair market value of a homestead is determined.

Proposed new §335.347(f) addresses the information that must be provided by the potentially responsible party within 90 days of a written request so that the executive director may make the determinations under the proposed new §335.347(b) - (d). This provision is important to allow a case to move forward in a timely manner and to allow the commission to proceed with a cost recovery action within any required statute of limitations if the potentially responsible party does not qualify for the cost recovery prohibition.

Proposed new §335.347(g) allows the potentially responsible party to request an extension of the time frame for providing documents in subsection (f).

Proposed new §335.347(h) states that for the purposes of the section, the executive director may determine that the property is not a homestead that is occupied by the individual as a home if the potentially responsible party does not provide the requested information within the required time frame. This provision is important so that the issue may be resolved and the case moved forward in situations where the information needed to make a determination that the property is a homestead that is occupied by the individual as a home is not provided. In addition, provisions are included which state that the potentially responsible party will receive notice of such a determination and that the determination is appealable.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENT

Jeffrey Horvath, Analyst, Strategic Planning and Appropriations Section, determined that, for the first five-year period the proposed rule is in effect, there will not be significant fiscal implications for the agency or other units of state and local government as a result of administration or enforcement of the proposed rule.

The proposed amendment implements HB 2252. The specific purpose of the proposed rule is to allow, and in some instances require, the executive director to consider certain financial information when pursuing cost recovery and liens or when compelling an individual to perform remediation studies or remedial actions.

Under current law, state Superfund remediation costs for which a person is liable constitute a lien in favor of the state on the real property and rights to the real property subject to, or affected by, the remedial action. HB 2252 amended THSC, Chapter 361, Subchapter F, Registry and Cleanup of Certain Hazardous Waste Facilities. The legislation and rule amendment make the following changes: 1) allow the executive director to consider when imposing liens against properties where remedial actions have been conducted whether the landowner profited from the disposal activity that led to the remediation, and whether the property is a homestead with a fair market value of $250,000 or less if occupied as a home by the landowner; 2) prohibit the commission from filing a cost recovery action against an individual whose only significant asset is a homestead occupied as that individual's home that includes the facility that is subject to the remedial action and has a fair market value of $250,000 or less; and 3) exempt from including as assets homesteads occupied by the owner as a home if the fair market value of the property is $250,000 or less, when the commission determines if the owner is financially capable of conducting remediation studies or remedial actions. The rulemaking tracks the legislation except that a provision is added to allow the executive director to find that a property does not meet the criteria for an exemption in cases where requested information needed to make the determination is not provided within 90 days of the request.

The rule provides criteria to be considered in evaluating whether a property owner should be subject to cost recovery for remediation conducted at facilities that are also homesteads occupied by the owner as a home and with a fair market value of $250,000 or less. The rule also prohibits the commission from filing cost recovery actions under some circumstances. Landowners who may qualify for the exemption would only need to provide, in a timely manner (within 90 days), information needed to determine if the exemption would apply to their property.

No significant fiscal implications are anticipated for the agency to conduct any additional financial capability determinations required to implement the proposed amendment. There are 46 facilities that are currently subject to state Superfund action. Of these, approximately three (6.5%) are thought to be homesteads that are residences for their owners with liens currently in place. According to the affected counties, the total appraised value for all of these properties is approximately $150,000. Historically, little, if any, cost recovery has resulted from liens in place on residential properties.

Therefore, no significant fiscal implications are anticipated for the agency in terms of the inability to obtain cost recovery from these property owners. Local governments may be able to collect additional tax revenues generated on some residential properties in the future. Owners often do not pay taxes on properties subject to Superfund liens, which typically exceed the value of the property. Any additional tax revenue collected by local governments is not expected to be significant.

PUBLIC BENEFITS AND COSTS

Mr. Horvath also determined that, for each year of the first five years the proposed rule is in effect, the public benefit anticipated from the enforcement of and compliance with the proposed rule will be compliance with state law and the establishment of criteria to be considered in evaluating whether a property owner should be subject to cost recovery for remediation conducted at facilities that are also homesteads occupied by the owner as a home with a fair market value of $250,000 or less.

Fiscal implications are anticipated to certain homestead property owners as a result of the implementation or enforcement of the proposed amendment.

As previously mentioned, there are three properties thought to be homesteads that are residences for their owners with liens currently in place. The total appraised value for all of these properties is approximately $150,000. If a homestead site meeting the proposed requirements is remediated, the owners may be protected from any cost recovery actions by the commission and would be able to sell the property as no lien would be attached. Superfund liens typically far exceed the value of the property. Assuming the three properties would have a market value near the appraised value and the owners were able to sell the properties, there would be a positive fiscal impact to all three owners of an estimated $150,000, exclusive of the amount of money they paid for the properties.

SMALL BUSINESS AND MICRO-BUSINESS ASSESSMENT

No adverse fiscal implications are anticipated as a result of implementation of the proposed rule for small or micro-businesses. None of the affected properties are small or micro-businesses, and if any future properties affected by the rulemaking are small or micro-businesses, any fiscal implications are expected to be similar to those for the three property owners.

LOCAL EMPLOYMENT IMPACT STATEMENT

The commission reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rule does not adversely affect a local economy in a material way for the first five years that the proposed rule is in effect.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The commission reviewed the proposed rule in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that this rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. While the specific intent of a "major environmental rule" is to protect the environment or reduce the risks to human health from environmental exposure, the specific intent of the proposed rule is to allow, and in some instances require, the executive director to consider certain financial information when pursuing cost recovery and liens or when compelling an individual to perform remediation studies or remedial actions. Thus, the specific intent of the proposed rule is not to protect the environment nor reduce the risks to human health from environmental exposure. Additionally, the proposed rule would not adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state.

The commission invites public comment on this draft regulatory impact analysis determination.

TAKINGS IMPACT ASSESSMENT

The commission evaluated the proposed rule and performed an assessment of whether the proposed rule constitutes a takings under the Texas Government Code, Chapter 2007. The specific purpose of the proposed rule is to allow, and in some instances require, the executive director to consider certain financial information when pursuing cost recovery and liens or when compelling an individual to perform remediation studies or remedial actions.

The proposed rule would substantially advance this stated purpose by amending §335.347 to: 1) require the executive director to determine a potentially responsible party's financial capacity if the party is an individual whose homestead includes the facility subject to or affected by a remedial action; 2) prohibit the agency from including the value of an individual's homestead in the total amount of the individual's assets if the individual is occupying the homestead as a home and the fair market value of the homestead is $250,000 or less; 3) specify criteria that the executive director may consider in determining whether to prepare an affidavit to attach a lien to real property or whether a lien is satisfied; 4) prohibit the commission from filing a cost recovery action under specified circumstances; 5) state how the fair market value of a homestead is determined; 6) require the potentially responsible party to submit certain information within 90 days of a written request so that the executive director may make such determinations; and 7) specify that, for the purposes of the rule, the property is not a homestead that is occupied by the individual as a home if the potentially responsible party does not provide the requested information within the required time frame.

The proposed rule does not impose a burden on private real property and it does not propose a use of private real property. Promulgation and enforcement of the proposed rule would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed rule does not affect a landowner's rights in private real property because the rulemaking does not burden the property in a manner that requires compensation as provided in specific articles of the United States and Texas Constitutions; nor does it restrict or limit the owner's right to the property resulting in a reduction in value by 25% or more beyond that which would otherwise exist in the absence of regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission reviewed this rulemaking for consistency with the Texas Coastal Management Program (CMP) goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the amendment is consistent with CMP goals and policies because the rulemaking relates only to the procedural mechanisms for cost recovery for remediation actions taken by the commission. The rulemaking will not have direct or significant adverse effect on any coastal natural resource areas; the rulemaking will not have a substantive effect on commission actions subject to the CMP; and promulgation and enforcement of the amendment will not violate (exceed) any standards identified in the applicable CMP goals and policies.

SUBMITTAL OF COMMENTS

Written comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2003-054-335-WS. Comments must be received by 5:00 p.m., January 5, 2004. For further information or questions concerning this proposal, please contact Joseph Thomas, Office of Environmental Policy, Analysis, and Assessment, (512) 239-4580.

STATUTORY AUTHORITY

The proposed amendment is authorized under HB 2252, 78th Legislature, 2003, which requires rules to implement the changes in law made to THSC, §§361.181, 361.194, 361.197, and 361.201. The proposed amendment is also authorized by THSC, §361.024, which provides the commission with the authority to adopt rules necessary to carry out its powers and

duties under THSC, Chapter 361. Additionally, the proposed amendment is authorized by Texas Water Code, §5.103, which provides the commission with the authority to adopt rules necessary to carry out its powers and duties under the Texas Water Code.

The proposed amendment implements THSC, §§361.181, 361.194, 361.197, 361.201, and 361.024. The proposed amendment also implements Texas Water Code, §5.103.

§335.347. Financial Considerations Concerning a Potentially Responsible Party [~~Capability~~ ~~Determinations~~].

(a) The executive director may make a determination of whether a potentially responsible party (PRP) is financially capable of participating in a facility investigation or remediation. Such a determination may be based on some or all of the following financial information:

(1) a PRP's audited financial statements;

(2) a PRP's federal or state income tax returns;

(3) a PRP's gross and net income for each of the preceding three years;

(4) a PRP's net worth for each of the preceding three years;

(5) a PRP's current cash flow position;

(6) a PRP's long-term liabilities;

(7) the liquidity of a PRP's assets; and

(8) any other data requested under [~~pursuant to~~] §335.345 of this title (relating to Requests for Information or Production of Documents), which in the opinion of the executive director is relevant to a determination of the ability of the PRP to participate in a facility investigation or remediation.

(b) The executive director will determine whether a PRP is financially capable of conducting any necessary remediation studies or remedial action if the PRP is an individual whose homestead includes the facility subject to, or affected by, a remedial action. The value of an individual's homestead may not be included in the total amount of the individual's assets if:

(1) the individual is occupying the homestead as a home; and

(2) the fair market value of the homestead is $250,000 or less.

(c) In making a determination under Texas Health and Safety Code, §361.194, as to whether to prepare an affidavit for lien or whether a lien is satisfied, the executive director may take into account a landowner's financial ability to satisfy the lien, including consideration of whether the landowner received financial compensation for the disposal of any substance addressed by the remedial action and whether the real property that is the subject of the lien:

(1) is a homestead and is being occupied as a home by the landowner; and

(2) has a fair market value of $250,000 or less.

(d) The executive director may not file a cost recovery action under Texas Health and Safety Code, §361.197 against an individual if the individual's only significant asset is a homestead that:

(1) includes the facility subject to, or affected by, a remedial action;

(2) is occupied by the individual as a home; and

(3) has a fair market value of $250,000 or less.

(e) For the purposes of this section, the fair market value of a homestead is the market value ascribed to a property by the tax appraisal authority of the county or counties in which the property is located, exclusive of any downward adjustment related to contamination. If this information is unavailable, the executive director may determine the fair market value of the property, which excludes any downward adjustment related to contamination, from information available at the time.

(f) The PRP shall provide the following information within 90 days after receipt of a written request by the executive director so that the executive director may conduct the determinations under subsections (b) - (d) of this section:

(1) information listed in subsection (a) of this section;

(2) evidence that the subject property is the individual's homestead; and

(3) evidence that the individual is occupying the property as a home.

(g) The PRP may request an extension of the required time frame for providing documents in subsection (f) of this section if the extension is requested by the PRP within the initial 90-day time frame.

(h) For the purposes of this section, the executive director may determine that the property is not a homestead that is occupied by the individual as a home if the PRP does not provide the information requested in subsection (f) of this section within the required time frame, including any extensions granted by the executive director. The executive director will provide any such determination in writing to the PRP. The executive director's determination that the property is not a homestead that is occupied by the individual as a home is final and appealable under Texas Health and Safety Code, §361.321.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308021
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 239-0348

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 364. MODEL SUBDIVISION RULES

The Texas Water Development Board (the board) proposes amendments to 31 TAC Chapter 364 concerning Model Subdivision Rules. The amendments are proposed to §§364.2, 364.18, 364.32, 364.33, 364.34, 364.36, 364.52, 364.54, 364.55, and 364.91. The amendments are proposed for cleanup and

clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board proposes to amend §364.2 to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission because it has changed its name. The board proposes to add new subsection §364.18(1) to define the term "commission" to refer to the Texas Commission on Environmental Quality rather than the Texas Natural Resource Conservation Commission since it has changed its name. Additionally, §364.18(17), which defined "TNRCC", is deleted. All remaining subsections in §364.18 are renumbered accordingly. Consequently, the board proposes to amend the references to the "TNRCC" in §§364.18(8), 364.32(a)(2), 364.33(a)(1), 364.33(b)(3), 364.34(a), 364.52(1)(A), 364.52(1)(B), 364.52(3)(A), 364.52(3)(B), 364.55(c)(2), 364.91(4), 364.91(5) and 364.91(6) to refer to the "commission".

The board proposes to amend Appendix 1A, which is an attached graphic for §364.32(a)(1). Appendix 1A is a sample form agreement and it contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board proposes to amend the form to reflect that the potential date for this agreement will be in this century so that it is proposed to be amended to be "20__".

The board proposes to amend §364.32(a)(2) to require a subdivider that proposes to create a public water system relying on groundwater to comply with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. At the time that the board adopted current §364.32(a)(2), Chapter 230 of 30 TAC had not been proposed or adopted. With the adoption and implementation of Chapter 230 of 30 TAC, the commission has adopted specific criteria in assessing groundwater availability for specified areas throughout the state. In order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications, the board adopts the criteria and process that the commission has implemented in 30 TAC Chapter 230. The board proposes to amend §364.32(b) to require a subdivider that proposes to rely on individual wells for each residential lot to comply with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.32(b) as the justification for this amendment.

The board also proposes to amend §364.32(b) to amend the citation of 30 TAC §290.103 to be a citation to 30 TAC §290.104, delete the reference to 30 TAC §290.105, add a reference to 30 TAC §290.108, and amend the reference to 30 TAC §290.110 to be a reference to 30 TAC §290.109. The existing cited provisions correctly identified the then existing appropriate primary drinking water standards the board, acting in consultation with the commission and the office of the attorney general, determined were the appropriate water quality standards to be applied for a county or municipality in approving individual wells for individual lots as a water supply source in new residential subdivisions in the affected counties. Since the adoption of these standards, the commission has amended and to some degree restructured 30 TAC Chapter 290 Subchapter F in which these drinking water standards are identified. The proposed amendments to §364.32(b) correct the references so that the references are to the appropriate sections to retain the drinking water standards that are intended by the board, in consultation with the commission and the office of the attorney general.

The board proposes to amend Appendix 1B, which is an attached graphic for §364.33(a)(2). Appendix 1B is a sample form agreement and it contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board proposes to amend the form to reflect that the potential date for this agreement will be in this century so that it is proposed to be amended to be "20__".

The board proposes an amendment to 364.33(b)(3) to amend the citation of 30 TAC §285.3(b) to be a citation to 30 TAC §285.3(i). At the time that the board adopted the existing §364.33(b)(3), 30 TAC §285.3(b) was the commission rule that prohibited certain wastewater disposal techniques that were deemed inadequate such as boreholes, cesspools, and seepage pits. The commission has amended its rules and the rule that now fully prohibits these wastewater disposal techniques is correctly identified as 30 TAC §285.3(i). The proposed amendment to 364.33(b)(3) corrects the existing reference to identify the current commission rule that prohibits these wastewater disposal techniques. The board proposes to amend §364.36 to change the statute referenced therein from Local Government Code §235.002(b)(2) to Local Government Code §233.062(c). This amendment is necessary due to legislative changes made in 2001 which changed the citation necessary to refer to this section.

The board proposes to amend §364.52 to delete the phrase "be accompanied by" and insert the phrase "include on the plat or have attached to the plat". The Local Government Code requires that the final engineering report required in this section actually be included on or attached to the plat. In certain circumstances, however, the board has learned that plats are being accepted without the engineering report being on or attached to the plat. This amendment is proposed to eliminate any confusion that may have lead to these circumstances.

The board proposes to amend §364.52(1)(A) to require that the final engineering report for a subdivision that will be connecting to an existing public water system and will rely on groundwater include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. At the time that the board adopted current §364.52(1)(A), Chapter 230 of 30 TAC had not been proposed or adopted. With the adoption and implementation of Chapter 230 of 30 TAC, the commission has adopted specific criteria in assessing groundwater availability for residential subdivisions throughout the state. In order to establish a consistent standard for counties and municipalities that enforce groundwater availability certifications, the board adopts the criteria and process that the commission has implemented in 30 TAC Chapter 230. The board proposes to amend §364.52(1)(B) to require that the final engineering report for a subdivision that will be connecting to a new public water system and will rely on groundwater include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.52(1)(A) as the justification for this amendment. The board proposes to amend §364.52(2) to require that the final engineering report for a subdivision that will rely on individual wells for each residential lot include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 which relates

to groundwater availability certification for platting. The board relies on the same reasons expressed in relation to the amendment to §364.52(1)(A) as the justification for this amendment.

The board proposes to amend Appendix 2A, which is an attached graphic for §364.54(a). Appendix 2A is a sample form agreement. Paragraph 3 of the sample agreement references "the final subdivision plat of the subdivision." In order for the form to be effective, a blank space should have been provided to allow the insertion of the name of the subdivision. The board proposes to amend the form to insert a blank between "the" and "subdivision" so that when the form is used the subdivision name can be inserted. On page iii of this sample form, paragraph 14 of the sample agreement states the county will provide timely notification to the subdivider of defects in construction. The sample form should reflect that for those instances that the notice states that the defects create immediate and substantial harm, the subdivider has five days to cure the defect. However, as currently printed, the agreement lacks the word "if" before the phrase "the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm" thereby requiring all defects to be cured within five days. The board proposes to amend this appendix to insert "if" before the phrase "the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm" to reflect the intent of the board for this provision. In paragraph 15 of this agreement, the text inadvertently states that the county may "disperse" certain funds. This verb was intended to be "disburse" and the board proposes to amend this appendix to so reflect. Finally, this sample agreement also contains an effective date at the end of the agreement. The effective date identified in the form currently references "19__". The board proposes to amend the form to reflect that the potential date for this agreement will be in this century so that it is proposed to be amended to be "20__".

The board proposes to amend Appendix 2B, which is an attached graphic for §364.54(c)(3). Appendix 2B is a sample form irrevocable letter of credit. Appendix 2B is a sample form agreement and it contains effective dates at the beginning of the agreement. The effective dates identified in the form currently references "19__". The board proposes to amend the form to reflect that the potential dates for this agreement will be in this century so that it is proposed to be amended to be "20__". Finally, the fourth paragraph of this letter references the "Uniform Customs and Practice for Documentary Credits, 1983 version, International Chamber of Commerce, Publication No. 400." This reference should be to the 1993 version, which is actually publication no. 500 of the International Chamber of Commerce. The board proposes to amend the appendix to change the reference to correct the version year and the correct publication number so that the reference is proposed to read as "Uniform Customs and Practice for Documentary Credits, 1993 version, International Chamber of Commerce, Publication No. 500."

The board proposes to amend §364.91(1) to include the phrase "and within the extraterritorial jurisdiction of the municipality." The Local Government Code provides that the municipalities that are required to adopt these subdivision regulations must adopt and enforce the rules within the extraterritorial jurisdiction of the municipality as well as within the corporate boundaries of the municipality. This amendment will make the statutory requirement clear in the rules as well.

The board proposes to amend §364.91(4) to amend the citation of 30 TAC §290.103 to be a citation to 30 TAC §290.104, delete the reference to 30 TAC §290.105, add a reference to 30 TAC §290.108, and amend the reference to 30 TAC §290.110 to be a reference to 30 TAC §290.109. The existing cited provisions correctly identified the then existing appropriate primary drinking water standards the board, acting in consultation with the commission and the office of the attorney general, determined were the appropriate water quality standards to be applied for a municipality in approving individual wells for individual lots as a water supply source in new residential subdivisions in the affected counties. Since the adoption of these standards, the commission has amended and to some degree restructured 30 TAC Chapter 290 Subchapter F in which these drinking water standards are identified. The proposed amendments to §364.91(4) correct the references so that the references are to the appropriate sections to retain the drinking water standards that are intended by the board, in consultation with the commission and the office of the attorney general.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period these sections are in effect there will be no fiscal implications on state and local government as a result of enforcement and administration of the sections.

Ms. Callahan has also determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcing the sections will be clarification of existing rule language so that requirements will be easier to understand and therefore easier to enforce. Ms. Callahan has determined there will be no economic costs to small businesses or individuals required to comply with the sections as proposed because these requirements are already in place and do not require any additional costs above the costs already borne by the small businesses or individuals required to comply with these provisions.

Comments on the proposed sections will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Deputy Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax @ 512/463-5580.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §364.2

The amendments are proposed under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15 and Chapter 17.

§364.2. Purpose.

The model rules provide the criteria for assuring that an adequate supply of safe drinking water and adequate safe sewer facilities are available to residential areas in accordance with state standards established by the Texas Department of Health and the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~]. The model rules prohibit the establishment of residential developments with lots of five acres or less without adequate water supply and sewer services, prohibit more than one single-family, detached dwelling to be located on each subdivision lot, and establish minimum setbacks to ensure proper operation of water supply and sewer services and to reduce the risk of fire hazards.

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307955
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 21, 2004
For further information, please call: (512) 475-2052

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SUBCHAPTER B. MODEL RULES
DIVISION 1. GENERAL AND ADMINISTRATIVE PROVISIONS

31 TAC §364.18

The amendments are proposed under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15 and Chapter 17.

§364.18. Definitions.

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

(1) Commission - the Texas Commission on Environmental Quality and any of its predecessor or successor entities.

(2) [~~(1)~~] Commissioners court (or court)--The commissioners court of _____ County, Texas.

(3) [~~(2)~~] County--_____ County, Texas.

(4) [~~(3)~~] Drinking water--All water distributed by any agency or individual, public or private, for the purpose of human consumption, use in the preparation of foods or beverages, cleaning any utensil or article used in the course of preparation or consumption of food or beverages for human beings, human bathing, or clothes washing.

(5) [~~(4)~~] Engineer--A person licensed and authorized to practice engineering in the State of Texas under the Texas Engineering Practice Act.

(6) [~~(5)~~] Final plat--A map or drawing and any accompanying material of a proposed subdivision prepared in a manner suitable for recording in the county records and prepared as described in these regulations.

(7) [~~(6)~~] Lot--An undivided tract or parcel of land.

(8) [~~(7)~~] Non-public water system--Any water system supplying water for domestic purposes which is not a public water system.

(9) [~~(8)~~] OSSF--On-site sewage facilities as that term is defined in rules and/or regulations adopted by the commission [~~TNRCC~~], including, but not limited to, 30 TAC Chapter 285.

(10) [~~(9)~~] Platted--Recorded with the county in an official plat record.

(11) [~~(10)~~] Public water system--A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, which includes all uses described under the definition for drinking water. Such a system must have at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

(12) [~~(11)~~] Purchaser--Shall include purchasers under executory contracts for conveyance of real property.

(13) [~~(12)~~] Retail public utility--Any entity meeting the definition of a retail public utility as defined in Water Code §13.002.

(14) [~~(13)~~] Sewerage facilities--The devices and systems which transport domestic wastewater from residential property, treat the wastewater, and dispose of the treated water in accordance with the minimum state standards contained or referenced in these rules.

(15) [~~(14)~~] Subdivider--Any owner of land or authorized agent thereof proposing to divide or dividing land so as to constitute a subdivision.

(16) [~~(15)~~] Subdivision--Any tract of land divided into two or more parts that results in the creation of two or more lots of five acres or less intended for residential purposes. A subdivision includes re-subdivision (replat) of land which was previously divided.

(17) [~~(16)~~] TAC--Texas Administrative Code, as compiled by the Texas Secretary of State.

~~[(17) TNRCC--Texas Natural Resource Conservation Commission.]~~

(18) Water facilities--Any devices and systems which are used in the supply, collection, development, protection, storage, transmission, treatment, and/or retail distribution of water for safe human use and consumption.

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307956
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 21, 2004
For further information, please call: (512) 475-2052

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DIVISION 2. MINIMUM STANDARDS

31 TAC §§364.32 - 364.34, 364.36

The amendments are proposed under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15 and Chapter 17.

§364.32. Water Facilities Development.

(a) Public water systems.

(1) Subdividers who propose to supply drinking water by connecting to an existing public water system must provide a written agreement with the retail public utility in substantially the form attached in Appendix 1A. The agreement must provide that the retail public utility has or will have the ability to supply the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of water meters and other necessary connection equipment, membership fees, water rights acquisition costs, or other fees associated with connection to the public water system so that service is available to each lot upon completion of construction of the water facilities described on the final plat.
Figure: 31 TAC §364.32(a)(1)

(2) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission [~~TNRCC~~]. The public water system, the water quality and system design, construction and operation shall meet the minimum criteria set forth in 30 TAC §§290.38-290.51 and §§290.101-290.120. If groundwater is to be the source of the water supply, the subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for new public water supply systems and certifies [~~which shall include an analysis of~~] the long term (30 years) quantity and quality of [~~the~~] available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply, the subdivider shall provide evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(b) Non-public water systems. Where individual wells or other non-public water systems are proposed for the supply of drinking water to residential establishments, [~~a test well or wells located so as to be representative of the quantity and quality of water generally available from the supplying aquifer shall be drilled by the subdivider and the produced waters sampled and submitted to a private laboratory for a complete chemical and bacteriological analysis of the parameters on which there are drinking water standards.~~] the [~~The~~] subdivider shall have prepared and provide a copy of a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision [~~which shall include an analysis of the long term (30 years) quantity of the available groundwater supplies relative to the ultimate needs of the subdivision~~]. The water quality of the water produced from the test well must meet the standards of water quality required for community water systems as set forth in 30 TAC §§290.104 [~~§§290.103, 290.105~~], 290.106, 290.108 and 290.109 [~~290.110~~], either:

(1) without any treatment to the water; or

(2) with treatment by an identified and commercially available water treatment system.

(c) (No change.)

§364.33. Wastewater Disposal.

(a) Organized sewerage facilities.

(1) Subdividers who propose the development of an organized wastewater collection and treatment system must obtain a permit to dispose of wastes from the commission [~~TNRCC~~] in accordance with 30 TAC Chapter 305 and obtain approval of engineering planning materials for such systems under 30 TAC Chapter 317 from the commission [~~TNRCC~~].

(2) Subdividers who propose to dispose of wastewater by connecting to an existing permitted facility must provide a written agreement in substantially the form attached in Appendix 1B with the retail public utility. The agreement must provide that the retail public utility has or will have the ability to treat the total flow anticipated from the ultimate development and occupancy of the proposed subdivision for a minimum of 30 years. The agreement must reflect that the subdivider has paid the cost of all fees associated with connection to the wastewater collection and treatment system have been paid so that service is available to each lot upon completion of construction of the wastewater facilities described on the final plat. Engineering plans for the proposed wastewater collection lines must comply with 30 TAC Chapter 317.
Figure: 31 TAC §364.33(a)(2)

(b) On-site sewerage facilities.

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

(3) The commission [~~TNRCC~~] or its authorized agent shall review proposals for on-site sewage disposal systems and make inspections of such systems as necessary to assure that the system is in compliance with the Texas Health and Safety Code, Chapter 366 and rules in 30 TAC Chapter 285, and in particular §§285.4, 285.5 and 285.30-285.39. In addition to the unsatisfactory on-site disposal systems listed in 30 TAC §285.3(i) [~~§285.3(b)~~], pit privies and portable toilets are not acceptable waste disposal systems for lots platted under these rules.

§364.34. Greywater Systems for Reuse of Treated Wastewater.

(a) Organized or municipal sewerage systems. Any proposal for sewage collection, treatment and disposal which includes greywater reuse shall meet minimum criteria of 30 TAC Chapter 210 promulgated and administered by the commission [~~TNRCC~~].

(b) (No change.)

§364.36. Setbacks

In areas that lack a nationally recognized fire code as listed in Local Government Code, §233.062(c) [~~§235.002(b)(2)~~] and lack water lines sized for fire protection, setbacks from roads and right-of-ways shall be a minimum of 10 feet, setbacks from adjacent property lines shall be a minimum of five feet, and shall not conflict with separation or setback distances required by rules governing public utilities, on-site sewerage facilities, or drinking water supplies. Setback lines required elsewhere in the orders or rules of the county shall control to the extent greater setbacks are therein required.

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307957
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 21, 2004
For further information, please call: (512) 475-2052

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DIVISION 3. PLAT APPROVAL

31 TAC §§364.52, 364.54, 364.55

The amendments are proposed under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15 and Chapter 17.

§364.52. Final Engineering Report.

The final plat shall include on the plat or have attached to the plat [~~be accompanied by~~] an engineering report bearing the signed and dated seal of a professional engineer registered in the State of Texas. The engineering report shall discuss the availability and methodology of providing water facilities and wastewater treatment to individual lots within the subdivision. A detailed cost estimate per lot acceptable to the county shall be provided for those unconstructed water supply and distribution facilities and wastewater collection and treatment facilities which are necessary to serve each lot of the subdivision. The plan shall include a construction schedule for each significant element needed to provide adequate water or wastewater facilities. If financial guarantees are to be provided under §364.54 of this title, the schedule shall include the start dates and completion dates.

(1) Public water systems.

(A) Where water supplies are to be provided by an existing public water system, the subdivider shall furnish an executed contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1A and referenced in §364.32(a)(1) of this title. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project which may include in addition to the county the commission [~~TNRCC~~] and the county health department. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for a public water supply systems and certifies [~~which shall include comments regarding~~] the long term (30 years) quantity and quality of [~~the~~] available groundwater supplies relative to the ultimate needs of the subdivision.

(B) Where there is no existing retail public utility to construct and maintain the proposed water facilities, the subdivider shall establish a retail public utility and obtain a Certificate of Convenience and Necessity (CCN) from the commission [~~TNRCC~~] and include evidence of the CCN issuance with the plat. Before final plat approval, plans and specifications for the proposed water facilities shall have been approved by all entities having jurisdiction over the proposed project. If groundwater is to be the source of the water supply, the final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for a public water supply systems and certifies [~~which shall include an analysis of~~] the long term (30 years) quantity and quality of [~~the~~] available groundwater supplies relative to the ultimate needs of the subdivision. If surface water is the source of supply then the final engineering report shall include evidence that sufficient water rights have been obtained and dedicated, either through acquisition or wholesale water supply agreement, that will provide a sufficient supply to serve the needs of the subdivision for a term of not less than 30 years.

(2) Non-public water systems. Where individual wells are proposed for the supply of drinking water to residences, the final engineering report shall include the quantitative and qualitative results of sampling the test wells in accordance with §364.32 of this title. The results of such analyses shall be made available to the prospective property owners. If the water quality of the test well required pursuant to §364.32(b) of this title does not meet the water quality standards as set forth in that section without treatment by an identified and commercially available water treatment system, then the final report must state the type of treatment system that will treat the water produced from the well to the specified water quality standards, the location of at least one commercial establishment within the county at which the system is available for purchase, and the cost of such system, the cost of installation of the system, and the estimated monthly maintenance cost of the treatment system. The final engineering report shall include a groundwater availability study that complies with the requirements of 30 TAC §§230.1 through 230.11 for water availability for individual water supply wells on individual lots and certifies the long term (30 years) quantity and quality of available groundwater supplies relative to the ultimate needs of the subdivision. [~~The engineer shall issue a statement concerning the availability of groundwater supplies to serve the fully developed subdivision over the next 30 years. Such statement may be based on information available from the Texas Water Development Board's Office of Planning.~~] The description of the required sanitary control easement shall be included.

(3) Organized sewerage facilities.

(A) Where wastewater treatment is to be provided by an existing retail public utility, the subdivider shall furnish evidence of a contractual agreement between the subdivider and the retail public utility in substantially the form attached in Appendix 1B and referenced in §364.33(a)(2) of this title. Before final plat approval, an appropriate permit to dispose of wastes shall have been obtained from the commission [~~TNRCC~~] and plans and specifications for the proposed wastewater collection and treatment facilities shall have been approved by all entities having jurisdiction over the proposed project.

(B) Where there is no existing retail public utility to construct and maintain the proposed sewerage facilities, the subdivider shall establish a retail public utility and obtain a CCN from the commission [~~TNRCC~~]. Before final plat approval, a wastewater treatment permit authorizing the treatment of the wastewater for the ultimate build-out population of the subdivision shall have been obtained from the commission [~~TNRCC~~] and plans and specifications for the proposed sewerage facilities shall have been approved by all entities having jurisdiction over the proposed project.

(4) (No change.)

§364.54. Financial Guarantees for Improvements.

(a) Applicability. If an adequate public or non-public water system or sewerage facility is not available from a retail public utility, or are not constructed by the subdivider, to serve lots intended for residential purposes of five acres or less at the time final plat approval is sought, then the commissioners court shall require the owner of the subdivided tract to execute an agreement with the county in substantially the form attached in Appendix 2A secured by a bond, irrevocable letter of credit, or other alternative financial guarantee such as a cash deposit which meet the requirements set forth below.
Figure: 31 TAC §364.54(a)

(b) Bonds. A bond that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) The bond or financial guarantee shall be payable to the county judge of the county, in his official capacity, or the judge's successor in office.

(2) The bond or financial guarantee shall be in an amount determined by the commissioners court to be adequate to ensure proper construction or installation of the public or non-public water facilities, and wastewater facilities to service the subdivision, including reasonable contingencies, but in no event shall the amount of the bond be less than the total amount needed to serve the subdivision as established by the engineer who certifies the plat.

(3) The bond shall be executed with sureties as may be approved by the commissioners court. The county shall establish criteria for acceptability of the surety companies issuing bonds that include but are not limited to:

(A) registration with the Secretary of State and be authorized to do business in Texas;

(B) authorization to issue bonds in the amount required by the commissioners court; and

(C) rating of at least B from Best's Key Rating Guide; or if the surety company does not have any such rating due to the length of time it has been a surety company, the surety company must demonstrate eligibility to participate in the surety bond guarantee program of the Small Business Administration and must be an approved surety company listed in the current United States Department of Treasury Circular 570. Such bonds shall meet the criteria contained in the rules and regulations promulgated by the United States Department of Treasury.

(4) The bond shall be conditioned upon construction or installation of water and wastewater facilities meeting the criteria established by Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(c) Letter of credit. A letter of credit that is submitted in compliance with subsection (a) of this section shall meet the following requirements.

(1) Any letter of credit submitted as a financial guarantee for combined amounts greater than $10,000 and less than $250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be 10 or better and primary capital must be at least 6.0% of total assets; and

(iii) total assets must be at least $25 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 1.5% of total assets and total assets must be greater than $25 million or tangible capital must be at least 3.0% of total assets if total assets are less than $25 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(2) Any letter of credit submitted as a financial guarantee for combined amounts greater than $250,000 must be from financial institutions which meet the following qualifications.

(A) Bank qualifications:

(i) must be federally insured;

(ii) Sheshunoff rating must be thirty or better and primary capital must be at least 7.0% of total assets; and

(iii) total assets must be at least $75 million.

(B) Savings and loan association qualifications:

(i) must be federally insured;

(ii) tangible capital must be at least 3.0% of total assets and total assets must be greater than $75 million, or tangible capital must be at least 5.0% of total assets if total assets are less than $75 million; and

(iii) Sheshunoff rating must be 30 or better.

(C) Other financial institutions qualifications:

(i) the letter of credit must be 110% collateralized by an investment instrument that would meet the qualifications for a county investment; and

(ii) the investment instrument must be registered in the county's name and the county must receive safekeeping receipts for all collateral before the letter of credit is accepted.

(3) The letter of credit shall list as sole beneficiary the county judge of the county, in his official capacity, or the judge's successor in office, and must be approved by the county judge of the county. The form of the letter of credit shall be modeled after the form attached in Appendix 2B.
Figure: 31 TAC §364.54(c)(3)

(4) The letter of credit shall be conditioned upon installation or construction of water and wastewater facilities meeting the criteria established under Division 2 of this subchapter and upon construction of facilities within the time stated on the plat, or on the document attached to the plat for the subdivision, or within any extension of time granted by the commissioners court.

(d) Financial guarantee. The county will determine the amount of the bond, letter of credit, or cash deposit required to ensure proper construction of adequate water and wastewater facilities in the subdivision.

(e) Alternative to county accepting a financial guarantee. The county may approve a final plat under this section without receiving a financial guarantee in the name of the county if:

(1) the property being subdivided lies wholly within the jurisdiction of the county;

(2) the property being subdivided lies wholly within the extra-territorial jurisdiction of a municipality; and

(3) the municipality has executed an interlocal agreement with the county that imposes the obligation on the municipality to:

(A) accept the bonds, letters of credit, or other financial guarantees, that meet the requirements of this section;

(B) execute the construction agreement with the subdivider; and

(C) assume the obligations to enforce the terms of the financial guarantee under the conditions set forth therein and complete construction of the facilities identified in the construction agreement.

§364.55. Review and Approval of Final Plats.

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

(c) Prerequisites to approval. Final plat approval shall not be granted unless the subdivider has accomplished the following:

(1) (No change.)

(2) provided evidence that the water facilities and sewerage facilities have been constructed and installed in accordance with the criteria established within these rules and the approvals from the commission [~~TNRCC~~] of the plans and specifications for such construction, including any change orders filed with these agencies; or

(3) (No change.)

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307958
Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 21, 2004
For further information, please call: (512) 475-2052

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SUBCHAPTER C. MODEL RULES (MUNICIPALITY)

DIVISION 2. MUNICIPALITIES WITH EXISTING SUBDIVISION ORDINANCES

31 TAC §364.91

The amendments are proposed under the authority of the Texas Water Code, §16.343 which requires the Texas Water Development Board prepare and adopt these rules to assure that minimum standards for safe and sanitary water supply and sewer services in residential areas of political subdivisions are met.

The statutory provisions affected by the proposed amendments are Texas Water Code, Chapter 15 and Chapter 17.

§364.91. Minimum Requirements

Subdivision ordinances adopted by a municipality must be reviewed and modified as necessary to incorporate the minimum standards contained in the model rules set out in Subchapter B of this chapter, including the following:

(1) application of the ordinances to the subdivision of a tract of land within the corporate limits of the municipality and the extraterritorial jurisdiction of the municipality into two or more lots of five acres or less intended for residential purposes;

(2) - (3) (No change.)

(4) prohibition of individual water wells or non-public water systems that do not meet the water quality standards developed by the commission [~~TNRCC~~] and set out in 30 TAC §§290.104 [~~§§290.103, 290.105~~], 290.106 , 290.108 and 290.109 [~~290.110~~];

(5) wastewater collection and disposal system standards consistent with the standards developed by the commission [~~TNRCC~~] and set out in 30 TAC Chapters 305 and 317 and in Health and Safety Code, Chapter 366;

(6) prohibition of pit privies, portable toilets, and on-site sewerage facilities that do not meet the wastewater treatment standards developed by the commission [~~TNRCC~~] and set out in 30 TAC Chapter 285;

(7) - (10) (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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Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: January 21, 2004
For further information, please call: (512) 475-2052

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 141. GENERAL PROVISIONS

SUBCHAPTER A. BOARD OF PARDONS AND PAROLES

37 TAC §141.1, §141.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.1 and §141.3, concerning the scope of authority of the board and its presiding officer. The amendments are proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendments is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004).

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§141.1. Presiding Officer (Chair) [and Policy Board].

(a) The presiding officer (chair) is designated by the governor and serves in that capacity at the pleasure of the governor. The presiding officer reports directly to the governor and serves as the administrative head of the board. The presiding officer [chair] acts as spokesperson for the board.

(b) The presiding officer may: [Six members of the board shall serve as the policy board of the Board of Pardons and Paroles. The governor designates the policy board. The term of a member of the policy board is six years, to be served concurrently with the member's term on the board. The chair of the board shall serve as presiding officer of the policy board.]

(1) delegate responsibilities and authority to other members of the board, parole commissioners, or to employees of the board;

(2) appoint advisory committees from the membership of the board or from parole commissioners to further the efficient administration of board business;

(3) establish policies and procedures to further the efficient administration of the business of the board; and

(4) provide a written plan for the administrative review of actions taken by a parole panel by a review panel.

(c) The presiding officer shall: [Policy board members shall administer other matters as required by the chair.]

(1) develop and implement policies that clearly separate the policy-making responsibilities of the board and the management responsibilities of the board administrator, parole commissioners, and the staff of the board;

(2) establish caseloads and required work hours for members of the board and parole commissioners;

(3) develop policies to ensure board members and parole commissioners implement the updated parole guidelines and assign precedential value to previous decisions of the board relating to the granting of parole and the revocation of parole or mandatory supervision, and develop policies to ensure that members of the board and parole commissioners use updated parole guidelines and previous decisions of the board and parole commissioners in making decisions under this chapter;

(4) require members of the board and parole commissioners to file activity reports that provide information on release decisions made by members of the board and parole commissioners, the workload and hours worked of the members of the board and parole commissioners, and the use of parole guidelines by members of the board and parole commissioners;

(5) report annually on all board activities of the board and parole commissioners, parole release decisions and the use of parole guidelines by the board and parole commissioners to the governor and the legislature; and

(6) designate the composition of each parole panel and designate panels composed of at least one board member and any combination of board members and parole commissioners.

(d) The presiding officer is responsible for the employment and supervision of:

(1) parole commissioners;

(2) a general counsel to the board;

(3) a board administrator to manage the day-to-day activities of the board;

(4) hearing officers;

(5) personnel to assist in clemency and hearing matters; and

(6) secretarial or clerical personnel.

§141.3. [Policy] Board Administration.

(a) The transaction of business before the board requires a quorum of the board and decisions require a majority of the quorum. Four members of the board constitute a quorum. [The policy board shall determine matters that affect all board members.]

(b) The [policy] board shall:

(1) adopt rules which govern the decision-making processes of the board;

(2) prepare information of public interest describing the functions of the board and make the information available to the public and appropriate state agencies [establish work hours and caseloads for members of the board and assign additional duties, as necessary, to members of the policy board];

(3) comply with federal and state laws related to program and facility accessibility [develop policies to ensure board members implement the updated parole guidelines and assign precedential value to previous decisions of the board relating to the granting of parole and the revocation of parole or mandatory supervision];

(4) prepare annually a complete and detailed written report that meets the reporting requirements applicable to financial reporting provided in the General Appropriations Act and accounts for all funds received and disbursed by the board during the preceding fiscal year [require members of the board to file activity reports regarding release decisions made by members of the board, workload, hours worked, and implementation of parole guidelines];

(5) develop for board members and parole commissioners a comprehensive training and education program on the criminal justice system, with special emphasis on the parole process; [report annually on all board activities and parole release decisions to the governor and the legislature.]

(6) develop and implement a training program that each newly hired employee of the board designated to conduct hearings under §508.281, Government Code must complete before conducting a hearing without the assistance of a board member or experienced parole commissioner or designee;

(7) develop and implement a training program to provide an annual update to designees of the board on issues and procedures relating to the revocation process;

(8) prepare and biennially update a procedural manual to be used by designees of the board. The board shall include in the manual:

(A) descriptions of decisions in previous hearings determined by the board to have value as precedents for decisions in subsequent hearings;

(B) laws and court decisions relevant to decision making in hearings; and

(C) case studies useful in decision making in hearings;

(9) prepare and update as necessary a handbook to be made available to participants in hearings under §508.281, Government Code such as defense attorneys, persons released on parole or mandatory supervision, and witnesses. The handbook must describe in plain language the procedures used in a hearing under §508.281, Government Code;

(10) develop and implement a policy that clearly defines circumstances under which a board member or parole commissioner should disqualify himself or herself from voting on:

(A) a parole decision or

(B) a decision to revoke parole or mandatory supervision;

(11) after consultation with the governor and the Texas Board of Criminal Justice, adopt a mission statement that reflects the responsibilities for the operation of the parole process that are assigned to the board, the division, the department, or the Texas Board of Criminal Justice;

(12) include in the mission statement a description of specific locations at which the board intends to conduct business related to the operation of the parole process;

(13) adopt rules relating to:

(A) the submission and presentation of information and arguments to the board, a parole panel, and the department for and in behalf of an inmate; and

(B) the time, place, and manner of contact between a person representing an inmate and:

(i) a member of the board or a parole commissioner;

(ii) an employee of the board; or

(iii) an employee of the department;

(14) develop according to an acceptable research method the parole guidelines that are the basic criteria on which a parole decision is made; and

(15) adopt a policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308002
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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37 TAC §141.2

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

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §141.2, concerning the number of members that constitutes a quorum of the policy board. The section is proposed for repeal to allow the identical information to be placed in 37 TAC §141.3, relating to board administration.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed repeal of this rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal.

Ms. Owens also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed rule repeal.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this repeal

The repeal is proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§141.2. Quorum.

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

Filed with the Office of the Secretary of State on November 20, 2003.

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Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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SUBCHAPTER B. RULEMAKING

37 TAC §141.57

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.57, concerning board procedures for petitions for rule adoptions. The amendments are proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendments is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by deleting references to the "policy board."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for

state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.082, Government Code, concerning the Board's authority to adopt rules relating to the submission and presentation of information and arguments to the Board.

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

§141.57. Petition for Adoption of Rule.

(a) Any interested person may petition the [~~policy~~] board requesting the adoption of a rule.

(b) The petition must be submitted in writing, must be identified as Petition for Adoption of Rule, and must comply with the following requirements:

(1) each rule requested must be requested by separate petition;

(2) each petition must state the name and address of the petitioner;

(3) each petition must be delivered to the general counsel of the board at its Austin office; and

(4) each petition shall include:

(A) a brief explanation of the proposed rule; and

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted in the current text, if any.

(c) Within 60 days after receipt of a petition, the [~~policy~~] board shall consider the petition at a regular meeting and thereafter shall either deny it in writing, stating its reasons for denial, or shall initiate rulemaking proceedings in accordance with the Government Code, §2001.021. A petition may be denied for failure to comply with the petition requirements of this rule.

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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Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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SUBCHAPTER D. REGISTRATION OF VISITORS AND FEE AFFIDAVITS

37 TAC §141.81

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §141.81, concerning board procedures for registering visitors to board offices. The amendment is proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendment is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by including "parole commissioner" where applicable.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of this amendment is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this amendment.

The amendment is proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.082, Government Code, concerning the Board's authority to adopt rules relating to the submission and presentation of information and arguments to the Board.

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

§141.81. Registration of Visitors.

Any person who appears before the board or a parole panel, or before any board member<u>, parole commissioner,</u> or any board employee whether in an interview or at a hearing, except those appearing as witnesses at a violation hearing, for the purpose of submitting or presenting information or arguments for and in behalf of any person within the jurisdiction of the board, shall register in the record of the board as required by law (Government Code, §2004.002).

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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Laura McElroy
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SUBCHAPTER E. INTERVIEWS

37 TAC §141.91

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.91, concerning board procedures for interviewing. The amendments are proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendments is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by including "parole commissioner" where applicable.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.082, Government Code, concerning the Board's authority to adopt rules relating to the submission and presentation of information and arguments to the Board.

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

§141.91. Purpose.

Any board member, parole commissioner [~~of the board~~] or [~~any~~] representative of the board may interview any person who wishes to present or submit information for and in behalf of any person within the jurisdiction of the board upon proper registration and presentation of any necessary fee affidavit. Such interview shall not be deemed to be a hearing and shall not be public.

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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Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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37 TAC §141.94

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

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §141.94, concerning decisions made during interviews. The section is proposed for repeal to bring the rules into compliance with current board practice.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed repeal of this rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal.

Ms. Owens also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed rule repeal.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this repeal

The repeal is proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§141.94. No Decision Permitted.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308019
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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SUBCHAPTER F. SUBPOENAS

37 TAC §141.101

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §141.101, concerning board procedures for issuing subpoenas. The amendments are proposed to incorporate new language under Chapter 141, General Provisions. The purpose of the amendments is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by deleting references to the "policy board."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§141.101. Issuance of Subpoenas.

(a) A [~~The board or a~~] parole panel may issue subpoenas requiring the attendance of witnesses and the production of records, books, papers, and documents as deemed necessary for the investigation of the case of any person before a parole panel or designee of the board.

(b) Subpoenas may be issued following the completion of an application prescribed by the board [~~Policy Board~~].

(c) Subpoenas may be signed and oath administered by any member of the board.

(d) A designee of the board [~~Board~~] may cause the issuance of subpoenas signed by a board [~~Board~~] member when necessary to obtain the attendance of witnesses or the production of any of the items referred to in subsection (a) of this section in accordance with §508.048, Government Code[~~, §508.048~~].

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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Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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37 TAC §141.102

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

The Texas Board of Pardons and Paroles proposes the repeal of 37 TAC §141.102, concerning serving and enforcing subpoenas. The section is proposed for repeal to eliminate duplicative wording from the rules.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed repeal of this rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this repeal.

Ms. Owens also has determined that for each year of the first five years the proposed repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the proposed rule repeal.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this repeal.

The repeal is proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§141.102. Service and Enforcement.

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

Filed with the Office of the Secretary of State on November 20, 2003.

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Laura McElroy
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Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

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CHAPTER 145. PAROLE
SUBCHAPTER A. PAROLE PROCESS

37 TAC §§145.1, 145.9, 145.16, 145.17

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§145.1, 145.9, 145.16 and 145.17 concerning parole considerations. The amendments are proposed to incorporate new language under Chapter 145, Parole. The purpose of the amendments is to conform the board's rules to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by replacing "board" with "parole panel" where applicable, and by adding "parole commissioner" where applicable. Another purpose of the amendments is to replace "inmate" with the preferred term, "offender."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this amendment.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§145.1. Parole Decision-Maker.

(a) Unless otherwise provided, parole decisions shall be made by two-thirds vote of a parole panel. The [~~entire~~] board is the parole release decision-maker of persons convicted of a capital felony offense, or an offense under §§21.11(a)(1), 22.021, or 12.42(c)(2) of the Penal Code. In these cases, the board may grant parole only upon a two-thirds vote [~~of the entire membership of the board~~]. The board is not required to meet as a body to perform this duty.

(b) In all other matters of parole and mandatory supervision and revocation of parole and mandatory supervision, three-member parole panels are parole decision-makers. A parole panel may consider any eligible offender for release and, upon a majority vote of the panel may approve or deny release to supervision. If a majority of the panel does not concur, the case is forwarded to a panel designated by the presiding officer (chair) to revote. The members of a parole panel are not required to meet as a body to perform these decision-making duties.

§145.9. Parole Interview.

Prior to consideration for parole by a parole panel, the offender[~~inmate~~] may be interviewed by a board member or parole commissioner whether it be the initial review or a subsequent review.

§145.16. Action upon Special Review of Information Not Previously Available - Release Approved.

(a) Responses received from trial officials or victims after a release to parole or release to mandatory supervision decision shall be considered information not previously available to the parole panel. Provided that release to parole or mandatory supervision has not occurred, the responses shall be referred to the parole panel or to the board office corresponding to the board panel that rendered the release to parole or release to mandatory supervision decision. A case reviewed by a parole panel, pursuant to the receipt of information not previously available to the parole panel, may then:

(1) be continued in a release to parole or release to mandatory supervision status with or without additional conditions of release imposed; or

(2) have the release to parole or release to mandatory supervision decision withdrawn and the next review date set by the parole panel in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

(b) Nothing in this rule is intended to restrict a parole panel [~~board~~] member from reconsidering a release vote to parole or mandatory supervision[~~vote~~].

§145.17. Action upon Special Review of Information Not Previously Available - Release Denied.

(a) This rule provides a forum for receipt and consideration of information not previously available to the parole panel where the decision of the panel was to deny release to parole or mandatory supervision. While affording a remedy for consideration of such information, the Board also intends by this rule to reduce frivolous and duplicate requests for special consideration.

(b) Requests for special review shall apply only to cases reviewed for release to parole or mandatory supervision where the decision of the parole panel was to deny release to parole or mandatory supervision.

(c) All requests for special review shall be in writing.

(d) Requests for special review shall be considered in the following circumstances:

(1) a parole panel denied release to parole or mandatory supervision and a parole panel[~~board~~] member who voted with the majority on that panel desires to have the decision reconsidered prior to the next review date; or

(2) a petition on behalf of an offender[~~inmate~~] cites information not previously available to the parole panel.

(e) Information not previously available shall mean only:

(1) responses from trial officials and victims;

(2) a change in an offender's[~~inmate's~~] sentence and judgment; or

(3) an allegation that the parole panel commits an error of law or board rule.

(f) All requests for special review shall be filed with The Texas Board of Pardons and Paroles, Board Administrator, P.O. Box 13401, Austin, Texas 78711.

(g) The board administrator shall refer to the special review parole panel only those requests for special review which meet the criteria set forth herein.

(h) A special review parole panel shall decide and exercise final action on such requests for special review.

(i) Upon considering a case for special review, the special review parole panel may take the following action:

(1) defer for request and receipt of further information;

(2) deny special review; or

(3) grant special review and revote the case in accordance with applicable provisions of Chapter 145 of this title (relating to Parole Process).

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

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Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

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37 TAC §§145.3, 145.12 - 145.15

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§145.3, 145.12, 145.13, 145.14 and 145.15 concerning parole decisions. The amendments are proposed to incorporate new language under Chapter 145, Parole. The purpose of the amendments is to conform the board's rules to new statutory law (§508.141, subsection (g), Government Code (SB 917, Acts of the 78th Legislature, Regular Session, 2003, effective 6/18/2003)) establishing time periods for considering offenders for release after denial; to conform to new statutory law (HB 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective 1/11/2004) by adding the term "parole commissioner" where applicable; and to conform to statutory law by updating the name of a Texas Department of Criminal Justice division. Another purpose of the amendments is to replace "inmate" or "prisoner" with the preferred term, "offender," and to replace "special needs parole" with the updated term, "Medically Recommended Intensive Supervision."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be the fulfillment of the new statutory requirements during the review process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§145.3. Policy Statements Relating to Parole Release Decisions by the Board of Pardons and Paroles.

To aid the Board of Pardons and Paroles in its analysis and research of parole release, the board adopts the following policies.

(1) Release to parole is a privilege, not an offender[~~inmate~~] right, and the parole decision maker is vested with complete discretion to grant, or to deny parole release as defined by statutory law.

(A) Candidates for parole are to be evaluated on an individual basis.

(B) There are no mandatory rules or guidelines [~~for analysis or set release criteria~~] that must be followed in every case because each offender[~~inmate~~] is unique.

[~~(C)~~] [~~Since~~] The [~~the~~] board and parole commissioners have [~~has~~] the statutory duty to make release decisions which are only in the best interest of society [~~, and when it thinks an inmate is able and willing to be a law-abiding citizen, set guidelines are merely optional tools to aid in the completely discretionary parole decision~~]. Parole panels use parole guidelines as a tool to aid in the discretionary parole decision process.

(2) The board will reconsider for release an offender other than an offender serving a sentence for an offense listed in §508.149(a), Government Code, as soon as practicable after the first anniversary of the date of denial, provided the decision to deny parole is on or after January 1, 2004, and the offender is otherwise eligible for consideration.

(3) An offender [~~inmate~~] will be considered for parole when eligible and when the offender[~~inmate~~] meets the following criteria with regard to behavior during incarceration.

(A) Other than on initial parole eligibility, the person must not have had a major disciplinary misconduct report in the six-month period prior to the date he is reviewed for parole; which has resulted in loss of good conduct time or reduction to a classification status below that assigned during that person's initial entry into TDCJ-ID.

(B) Other than on initial parole eligibility, at the time he is reviewed for parole the person must be classified in the same or higher time earning classification assigned during that person's initial entry into TDCJ-ID.

(C) If any offender[~~inmate~~] who has received an affirmative vote to parole and following the vote, notification is received that the offender[~~inmate~~] has been reduced below initial classification status or has lost good conduct time, the parole decision will be reviewed and revoted by the parole panel that rendered the decision.

(D) A person who has been revoked and returned to custody for a violation of the conditions of release to parole or mandatory supervision will be considered for release to parole or mandatory supervision when eligible.

(E) An offender[~~inmate~~] who is otherwise eligible for parole and who has charges pending alleging a felony offense committed while in TDCJ, and for which a complaint has been filed with a magistrate of the State of Texas, any facility under its supervision, or a facility under contract with TDCJ will not be considered for release to parole or mandatory supervision.

(F) An offender[~~inmate~~] who is otherwise eligible for release and meets the criteria for Medically Recommended Intensive Supervision (MRIS)[~~special needs parole~~] as required by Government Code, §508.146, may be considered for release on parole if the parole review[~~docket~~] date is more than six months from the date of application for MRIS[~~special needs parole~~].

(4) [~~(3)~~] Any consideration by a Board member of an offender's[~~inmate's~~] litigation activities when determining an offender's[~~inmate's~~] candidacy for parole is strictly prohibited. No offender[~~inmate~~] will be denied the opportunity to present to the judiciary, including appellate courts, his or her allegations concerning violations of fundamental constitutional rights. Any consideration of such legal activity during the parole process is a violation of Board policy. In the event parole is denied in violation of this subsection, the offender[~~inmate~~] may pursue a remedy under the special review provisions of §145.17 of this title (relating to Action Upon Review of Information Not Previously Available - Release Denied).

§145.12. Action upon Review.

A case reviewed by a parole panel for parole consideration may be:

(1) deferred for request and receipt of further information;

(2) denied a favorable parole action at this time and set for review on a future specific month and year (Set-Off). The next review [~~docket~~] date (Month/Year) for an offender serving a sentence listed in §508.149(a), Government Code, may be set at any date after the first anniversary of the date of denial and end before the fifth anniversary of the date of denial. The next review date for an offender serving a sentence not listed in §508.149(a), Government Code, shall be as soon as practicable after the first anniversary of the denial [~~in the three-year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed~~];

(3) denied [~~deny~~] parole and ordered [~~order~~] serve-all, but in no event shall this be utilized if the offender's projected release date is greater than five years for offenders serving sentences listed in §508.149(a), Government Code or greater than one year for offenders not serving sentences listed in §508.149(a), Government Code [~~minimum expiration date is over three years from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed. If the serve-all date in effect on the date of the panel decision is extended by more than 180 days, the case shall be placed in regular parole review~~];

(4) determined that the totality of the circumstances favor the offender's release on parole, further investigation (FI) is ordered in the following manner; and, upon release to parole, all conditions of parole or release to mandatory supervision that the parole panel is required by law to impose as a condition of parole or release to mandatory supervision are imposed;

(A) FI-1 - Release the offender when eligible;

(B) FI-2 (Month/Year) - Release on a specified future date [~~within the three-year incarceration period following either the prior parole docket date or date of the panel decision if the prior parole docket date has passed~~];

(C) FI-3 R (Month/Year) - Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than three months from specified date. Such TDCJ program may include the Pre-Release Substance Abuse Program (PRSAP) [~~. In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed~~];

(D) FI-4 (Month/Year) - Transfer to Pre-Parole Transfer facility prior to presumptive parole date set by a board panel and release to parole supervision on presumptive parole date [~~, but in no event shall the specified date be set more than three years from either initial eligibility date, current docket date or date of panel decision, if the aforementioned dates have passed~~];

(E) FI-5 - Transfer to In-Prison Therapeutic Community Program. Release to aftercare component only after completion of IPTC program;

(F) FI-6 R (Month/Year) - Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than six months from specified date. Such TDCJ program may include the Pre-Release Therapeutic Community (PRTC) [~~. In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed~~];

(G) FI-9 R (Month/Year) - Transfer to a TDCJ rehabilitation program. Release to parole only after program completion and no earlier than nine months from specified date. Such TDCJ program may include the In-Prison Therapeutic Community (IPTC) [~~. In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed~~];

(H) FI-18 R (Month/Year) - Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than 18 months from specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP) [~~. In no event shall the specified date be set more than three years from the current docket date or the date of the panel decision if the current docket date has passed~~];

(5) any person released to parole after completing a TDCJ treatment program as a prerequisite for parole, must participate in and complete any required post-release program.

§145.13. Action upon Review; Consecutive (Cumulative) Felony Sentencing.

(a) This section applies only to an offender sentenced to serve consecutive sentences if each sentence in the series is for an offense committed on or after September 1, 1987.

(b) A parole panel shall review for parole consideration consecutive felony sentencing cases as determined and in the sequence submitted by TDCJ.

(c) If the case under parole consideration is a pre-final consecutive felony sentencing case, the parole panel may:

(1) defer for request and receipt of further information;

(2) vote CU/FI (Month/Year Cause Number), designate the date on which the offender would have been eligible for release on parole if the offender had been sentenced to serve a single sentence. This date shall be within a three-year incarceration period following [~~either the prior parole docket date or date of~~] the panel decision;[~~if the prior parole docket date has passed.~~]

(3) vote CU/NR (Month/Year Cause Number), deny favorable parole action and set the next review date at one year from the panel decision date. If the offender is serving an offense under §508.149(a), Government Code, the next review date (month/year) may be set at any date in the five-year incarceration period following the panel decision date, but in no event shall it be less than one calendar year from the panel decision date [~~for review on a future specific month and year (set off). The next review docket date (Month/Year) may be set at any date in the three year incarceration period following the prior parole docket date, but in no event shall it be less than one calendar year from either the prior parole docket date or the date of the panel decision if the prior parole docket date has passed~~]; or

(4) vote CU/SA (Month/Year Cause Number): If the offender is serving an offense under §508.149(a), Government Code, deny [~~Deny~~] release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over five years from the date of the panel decision. If the offender is not serving an offense under §508.149(a), Government Code, deny release and order serve-all, but in no event shall this be utilized if the offender's maximum expiration date is over one year from the date of the panel decision [~~;an offender is within 36 months of their maximum expiration date~~].

(d) If the case under parole consideration is the last and final in a series of consecutive felony sentencing cases, the case shall be reviewed in accordance with §145.12 of this title (relating to Action upon Review).

(e) When a parole panel reviews for parole consideration a consecutive felony sentencing case, the parole panel shall indicate the Cause Number of the consecutive felony sentencing case it is considering.

§145.14. Action upon Review; Release to Mandatory Supervision.

(a) This section applies only to an offender [~~a prisoner~~] eligible for release to mandatory supervision if the sentence is for an offense committed on or after September 1, 1996.

(b) A parole panel shall consider the offender [~~prisoner~~] for release to mandatory supervision if release of the offender [~~prisoner~~] may occur because the offender [~~prisoner~~] will reach a mandatory supervision date [~~as determined by TDCJ~~].

(c) Upon considering a case for release to mandatory supervision a parole panel may:

(1) defer for request and receipt of further information;

(2) vote DMS Month/Year, deny release to mandatory supervision and set for review on a future specific month and year (set-off). The next mandatory supervision review [~~docket~~] date (Month/Year) shall be set one year from either the current panel decision date or [~~either~~] the previous panel decision [~~prior parole docket~~] date [~~or the date of the panel decision if the prior parole docket date has passed~~]; or,

(3) vote RMS, release to mandatory supervision [~~when TDCJ determines that the prisoner has reached a mandatory supervision date~~].

(d) Subsection (c) of this section applies to all subsequent reconsiderations for release to mandatory supervision.

§145.15. Action Upon Review; Extraordinary Vote.

(a) This section applies to any offender convicted of a capital offense under §21.11(a)(1) or §22.021, Penal Code, or who is required under §508.145(c), Government Code, to serve 35 calendar years before becoming eligible for parole review. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

(1) Upon review, use of the full range of voting options is not conducive to determining whether two-thirds of the board considers the offender ready for release to parole.

(2) If it is determined that circumstances favor the offender's release to parole the board has the following voting options available:

(A) FI-1: Release the offender when eligible; or

(B) FI-18R (Month/Year): Transfer to a TDCJ rehabilitation treatment program. Release to parole only after program completion and no earlier than eighteen months from the specified date. Such TDCJ program may include the Sex Offender Treatment Program (SOTP). In no event shall the specified date be set more than three years from the current panel decision [~~docket~~] date [~~or the date of the panel decision if the current docket date has passed~~].

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year): Deny release and set the next review date for [~~review in~~] 36 months following the panel decision date; or

(B) SA: The offender's minimum or maximum expiration date is less than 36 months away. The offender will continue to serve their sentence until that date.

(b) If the offender is sentenced to serve consecutive sentences and each sentence in the series is for an offense committed on or after September 1, 1987, the following voting options are available to the board panel:

(1) CU/FI (Month/Year-Cause Number): A favorable parole action that designates the date an offender would have been released if the offender had been sentenced to serve a single sentence;

(2) CU/NR (Month/Year-Cause Number): Deny release and set the next [~~date for~~] review date for 36 months following [~~from either~~] the panel decision [~~prior docket~~] date [~~or the date of the panel decision if the prior parole docket date has passed~~]; or

(3) CU/SA (Month/Year-Cause Number): Deny release and order serve-all if the [~~; an~~] offender is within 36 months of their maximum expiration date.

(c) Some offenders are eligible for consideration for release to Discretionary Mandatory Supervision if the sentence is for an offense committed on or after September 1, 1996. Prior to the offender reaching the mandatory release date, the voting options are the same as those listed in subsections (a) and (b) in this section. Once an offender reaches the mandatory supervision serve all (SA) date, a three-member parole panel will consider the offender for release to mandatory supervision using the following options:

(1) RMS: Release to mandatory supervision [~~when TDCJ determines that the prisoner has reached a mandatory supervision date~~]; or

(2) DMS (Month/Year): Deny release to mandatory supervision and set for review on a future specific month and year (set-off). The next mandatory supervision review date (month/year) shall be set one year from the current panel decision date or the previous panel decision date [~~The next date for mandatory supervision review shall be set one year from either the prior docket date or the date of the panel decision if the prior parole docket date has passed~~].

(d) Upon review of any eligible offender who qualifies for release to Medically Recommended Intensive Supervision (MRIS), the MRIS panel shall initially vote to either recommend or deny MRIS consideration. The MRIS panel shall base this decision on the offender's medical condition and medical evaluation, and shall determine whether the offender constitutes a threat to public safety.

(1) If the MRIS panel determines the offender does constitute a threat to public safety, no further voting is required.

(2) If the MRIS panel determines that the offender does not constitute a threat to public safety, the case shall be sent to the full board, which shall determine whether to approve or deny the offender's release to parole. The following voting options are available to the board:

(A) Approve MRIS: The board shall vote FI-1 and impose special condition "O"-"The offender shall comply with the terms and conditions of the MRIS program and abide by a Texas Correctional Office for Offenders with Mental or Medical Impairments (TCOOMMI)[~~TCOMI~~]-approved release plan. At any time this condition is in effect, an offender shall remain under the care of a physician and in a medically suitable placement"; the board shall provide appropriate reasons for the decision to approve MRIS.

(B) Deny MRIS: The board shall provide appropriate reasons for the decision to deny MRIS.

(3) The decision to approve release to MRIS for an offender remains in effect until specifically withdrawn by the board.

(e) If a request for a special review meets the criteria set forth in §145.17(a) - (d) of this title (relating to Action upon Special Review of Information Not Previously Available-Release Denied), the offender's case shall be sent to the special review panel.

(1) The special review panel may take action as set forth in §145.17(i) of this title.

(2) When the special review panel decides the offender's case warrants a special review, the case shall be re-voted by the full board. The presiding officer [~~chair~~] shall determine which board office will begin the voting. Voting options are the same as those in subsections (a) - (c) of this section.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308011
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

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SUBCHAPTER B. TERMS AND CONDITIONS OF PAROLE

37 TAC §145.21

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §145.21 concerning parole in absentia. The amendments are proposed to incorporate new language under Chapter 145, Parole. The purpose of the amendments is to update the name of a division in the Texas Department of Criminal Justice, and to replace "prisoner" and "administrative releasee" with the preferred term, "offender."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed adoption of these amendments is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of this amendment.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes, and §508.044, Government Code, providing the Policy Board with the authority to adopt rules relating to the eligibility of an inmate for release on parole or mandatory supervision.

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

§145.21. Parole in Absentia (Parole Review and Mandatory Supervision for Offenders[~~Prisoners~~] Not in Actual Physical Custody of the TDCJ Correctional Institutions [~~Institutional~~] Division).

Offenders[~~Prisoners~~] serving state prison sentences for Texas crimes and offenders[~~prisoners~~] whose parole or mandatory supervision has been revoked who are not in the actual physical custody of the Texas Department of Criminal Justice (TDCJ) Correctional Institutions [~~Institutional~~] Division are subject to the parole review process as set out in this chapter and title in accord with the following.

(1) Parole in absentia processing is initiated by the assigned Correctional Institutions [~~Institutional~~] Division staff upon referral from the county of conviction when all necessary pen packet documents have been compiled and presented to the Correctional Institutions [~~Institutional~~] Division.

(2) Prior to consideration for parole by the parole panel, the offender [~~inmate~~] may be interviewed by a representative of the Correctional Institutions [~~Institutional~~] Division for the purpose of obtaining a parole release plan and completion of a parole in absentia summary in order that the parole panel may make an informed decision concerning parole release suitability (§145.12 of this title, [~~(~~] relating to Action upon Review [~~)~~]; §145.16 of this title, [~~(~~] relating to Action upon Special Review of Information Not Previously Available- Release Approved [~~)~~]; and §145.17 of this title, [~~(~~] relating to Action upon Special Review of Information Not Previously Available- Release Denied [~~)~~]).

(3) An offender [~~A prisoner~~] released to parole in absentia or mandatory supervision on a Texas felony sentence shall, after release, be treated the same as an offender[~~a prisoner~~] released on parole or mandatory supervision directly from the TDCJ Correctional Institutions [~~Institutional~~] Division. Such offenders[~~administrative releasees~~] are subject to revocation for violation of the terms and conditions of their release pursuant to the provisions and procedures of Chapter 146 of this title (relating to Revocation of Parole or Mandatory Supervision, [~~(~~] §§146.3-146.10[~~)~~]).

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308012
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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CHAPTER 146. REVOCATION OF PAROLE OR MANDATORY SUPERVISION

37 TAC §146.6, §146.8

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §146.6 and §146.8, concerning the scheduling of preliminary and revocation hearings. The amendments are proposed to incorporate new language under Chapter 146, Revocation of Parole or Mandatory Supervision. The purpose of the amendments is to conform the board's rules to new statutory

law (§508.282, Government Code (Senate Bill 880, Acts of the 78th Legislature, Regular Session, 2003, effective September 1, 2003)), which changed the number of days allowed for disposition of certain charges regarding a violation of parole or other forms of release from prison.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amended sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be a streamlined hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended sections as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

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

§146.6. Scheduling of Preliminary Hearings [~~Hearing~~].

(a) (No change.)

(b) For the purposes of subsection (a)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 41st [~~61st~~] day with the commission of an offense; or

(2) (No change.)

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

§146.8. Scheduling of Revocation Hearings [~~Hearing~~].

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

(e) For the purposes of subsection (b)(1) of this section, a warrant is executed if:

(1) the releasee is arrested only on a charge that the releasee has committed a violation of a condition of parole or mandatory supervision and is not charged before the 41st [~~61st~~] day with the commission of an offense; or

(2) (No change.)

(f) (No change.)

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308013

Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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CHAPTER 147. HEARINGS
SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1, 147.2, 147.5

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §§147.1, 147.2 and 147.5, concerning hearings and the authority of hearing officers. The amendments are proposed to incorporate new language under Chapter 147, Hearings. The purpose of the amendments is to make non-substantive changes to the wording of the board rules.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be clarification of the rules relating to the hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended sections as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

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

§147.1. Public Hearings.

(a) (No change.)

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential [~~and/~~]or privileged nature of information presented shall be given effect by the hearing officer.

(c) To effect this provision, the hearing officer shall have the authority to close the [~~any~~] hearing [~~to which he is assigned~~] to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

§147.2. Authority of Hearing Officers.

(a) A hearing officer shall have the following authority:

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

(8) to maintain order and decorum throughout the course of any proceedings [~~held before him~~];

(9) - (11) (No change.)

(b) (No change.)

§147.5. Witnesses.

(a) The hearing officer may determine whether a witness may be excused under the rule that excludes witnesses from the hearing[~~, on request or motion of a party or on his own motion, invoke the rule (regarding the exclusion of witnesses during the testimony of other witnesses), provided that the following applies~~].

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

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

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308015
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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37 TAC §147.3

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §147.3, concerning communicating the facts or laws from a hearing to all the parties involved. The amendments are proposed to incorporate new language under Chapter 147, Hearings. The purpose of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) by amending the list of individuals who render hearing decisions.

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes and §508.044, Government Code, giving the Policy Board the authority to adopt rules relating to the conduct of hearings.

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

§147.3. Ex Parte Consultations

Unless required for the disposition of matters authorized by law, hearing officers, [~~the~~] board members and[~~, or~~] parole commissioners [~~panels~~] assigned to render a decision or to make findings of fact and conclusions of law in an individual case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308119
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.56

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC §150.56, concerning the administration of the agency. The amendments are proposed to incorporate new language under Chapter 150, Memorandum of Understanding and Board Policy Statements. The purpose of the amendments is to conform the board's rules to new statutory law (House Bill 7, Acts of the 78th Legislature, 3rd Called Session, 2003, effective January 11, 2004) and to replace the term "chairperson" with the preferred term, "presiding officer."

Rissie Owens, Presiding Officer of the Board, has determined that for the first five-year period the proposed amendments are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Ms. Owens also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments will be access to updated rules. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended section as proposed.

Comments should be directed to Laura McElroy, General Counsel, Texas Board of Pardons and Paroles, 209 West 14th Street, Suite 500, Austin, Texas 78701. Written comments from the general public must be received within 30 days of the publication of these amendments.

The amendments are proposed under §508.036, Government Code, which provides the Policy Board with the authority to promulgate rules relating to the board's decision-making processes.

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

§150.56. Policies Pertaining to the Administration of the Agency.

(a) The [~~policy~~] board has overall managerial responsibility for developing, promulgating, and investigating policies on parole and[~~,~~] mandatory supervision[~~, and the overall operation and administration of the agency~~].

(b) The presiding officer [~~chairperson~~] of the board or the presiding officer's [~~chairperson's~~] designee acts as the agency's liaison to the legislature. The [~~policy~~] board shall have final approval over all proposed legislation before being submitted to the legislature.

(c) The presiding officer [~~chairperson~~] of the board or the presiding officer's [~~chairperson's~~] designee shall serve as agency spokesperson on all matters pertaining to board policy.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308016
Laura McElroy
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 406-5388

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 1. PRESUMPTIVE MEDICAID FOR PREGNANT WOMEN PROGRAM
SUBCHAPTER A. ELIGIBILITY REQUIREMENTS

40 TAC §1.1

The Texas Department of Human Services (DHS) proposes to amend §1.1, concerning client eligibility requirements, in its Presumptive Medicaid for Pregnant Women Program chapter. The purpose of the amendment is to correct a reference within the rule. The corrected reference provides the current location of eligibility requirements for pregnant women in the Children and Pregnant Women Program.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is to have the most accurate rule possible. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the rule corrects a reference and does not affect the operation of businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Eric McDaniel at (512) 438- 2909 in DHS's Texas Works Policy section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-001, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 32, which authorizes DHS to administer public and medical assistance programs, and under Government Code, §531.021, which provides the Texas Health and Human Services Commission with the authority to administer federal medical assistance funds.

The amendment affects the Human Resources Code, §§22.0001-22.038 and §§32.001-32.053.

§1.1. Client Eligibility Requirements.

(a) (No change.)

(b) Pregnant applicants must meet all applicable eligibility requirements for pregnant women as specified in Chapter 2 [~~4~~] of this title (relating to Medically Needy and Children and Pregnant Women Programs [~~Medicaid Programs--Children and Pregnant Women~~]) and apply at qualified provider sites.

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

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308053
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 438-3734

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CHAPTER 12. SPECIAL NUTRITION PROGRAMS
SUBCHAPTER A. CHILD AND ADULT CARE FOOD PROGRAM (CACFP)
DIVISION 2. ELIGIBILITY OF CONTRACTORS AND FACILITIES

40 TAC §12.21

The Texas Department of Human Services (DHS) proposes to amend §12.21, concerning Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?, in its Special Nutrition Programs chapter. The purpose of the amendment is to

delete the specific dollar amount of the threshold to the single audit requirements.

Gordon Taylor, Chief Financial Officer, has determined that, for the first five-year period the proposed section is in effect, there are no fiscal implications for state or local government as a result of enforcing or administering the section.

Judy Denton, Deputy Commissioner for Family Services, has determined that, for each year of the first five years the section is in effect, the public benefit anticipated as a result of enforcing the section is the administrative savings gained from not having to amend the section every time the audit threshold is revised. There is no adverse economic effect on small or micro businesses as a result of enforcing or administering the section, because the nonprofit organizations and governmental entities to which this section applies do not fit the definition of a small or micro business. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated effect on local employment in geographic areas affected by this section.

Questions about the content of this proposal may be directed to Nancy Hill at (512) 420- 2578 in DHS's Special Nutrition Programs. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-321, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

Under §2007.003(b) of the Government Code, DHS has determined that Chapter 2007 of the Government Code does not apply to this rule. Accordingly, DHS is not required to complete a takings impact assessment regarding this rule.

The amendment is proposed under the Human Resources Code, Chapters 22 and 33, which authorizes DHS to administer public and nutritional assistance programs.

The amendment implements the Human Resources Code, §§22.0001-22.038 and §§33.001-33.027

§12.21. Must a renewing contractor show compliance with the single audit requirements in 7 CFR Part 3052 in order to participate in the CACFP?

Yes. Nonprofit organizations subject to single audit requirements [~~that expend $300,000 dollars or more in federal financial participation during the organization's fiscal year~~] must obtain an organization- wide or program-specific audit in accordance with the single audit requirements in 7 CFR Part 3052 and Division 17 of this subchapter (relating to Audits).

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307951
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 438-3734

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PART 17. STATE PENSION REVIEW BOARD

CHAPTER 603. OFFICERS AND MEETINGS

40 TAC §603.30

The Texas Pension Review Board proposes an amendment to §603.30, concerning election of officers each calendar year. The purpose of the amendment is to amend the election of officers and would remove the word chair because the Government Code Title 8, Subtitle A, §801.110 states that "The governor shall designate a member of the board as the presiding officer of the board to serve in that capacity at the will of the governor."

Jesse Ayala, Accountant, Texas Pension Review Board, has determined that for the first five-year period the sections as proposed will be in effect, there will be no fiscal implications for state or local government. The rule does not have any adverse affect to small or micro-businesses or to those who are required to comply with the rule.

Comments concerning the proposed sections should be submitted within 30 days of publication to Virginia Smith, Executive Director, Texas Pension Review Board, P.O. Box 13498 Austin, Texas 78711-3498, or by email to ginger.smith@prb.state.tx.us. For further information, please call: (512) 463-1736.

The amendments are proposed under the rulemaking authority provided in Government Code, Tile 8, Subtitle A, §801.201(a) which authorizes the board to adopt rules necessary for the conduct of its business.

§603.30. Officers.

The members of the board shall elect for each calendar year a [~~chairman and vice-chairman~~] vice-chair. The [~~officers~~] vice-chair shall be elected at the last scheduled regular board meeting [~~prior to the next~~] of each calendar year and [~~they~~] the vice-chair shall take office the following January 1. The [~~chairman~~] chair of the board [~~or the vice-chairman, in the chairman's absence,~~] presides at the meetings of the board. While presiding, the [~~chairman~~] chair directs the order of the meeting, recognizes persons to be heard, limits time, and takes other action to clarify issues, and preserves order. In the presiding officer's absence, the vice-chair assumes all of the duties of the presiding officer.

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

Filed with the Office of the Secretary of State on November 18, 2003.

TRD-200307931
Lynda Baker
Executive Assistant
State Pension Review Board
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 463-1736

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TITLE 43. TRANSPORTATION

PART 3. AUTOMOBILE THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE THEFT PREVENTION AUTHORITY

43 TAC §57.3, §57.42

The Automobile Theft Prevention Authority (ATPA) proposes amendments to Chapter 57, relating to the ATPA. The proposed amendments update the reference to the ATPA's zip code in §57.3 and §57.42.

Susan Sampson, Director of the ATPA, has determined that for the first five-year period the amendments are in effect, there will be no additional fiscal implications for state and local governments as a result of enforcing or administering the proposed amendments. Ms. Sampson also has determined that the public benefit anticipated as a result of the proposed amendments will be better notice to the public as to the Authority's physical location and correction of their new zip code. There will be no economic effect on micro or 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 may be submitted to Susan Sampson, Director Automobile Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days from the date that the proposed action is published in the *Texas Register*.

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a), which the Authority interprets as authorizing it to adopt rules implementing its statutory powers and duties.

The following are the statutes, articles, or codes affected by the amendments: §§57.3, .42-Article 4413(37), §6(a)

§57.3. Compliance Adoption by Reference.

Grantee/applicants shall comply with all applicable state and federal statues, rules, regulations, and guidelines. The ATPA adopts by reference the following statutes, documents, and forms. Information regarding these adoptions by reference may be obtained from the Automobile Theft Prevention Authority, 4000 Jackson Avenue Austin, Texas 78731, [~~78779~~] (512) 374-5101:

(1) - (6) (No Change.)

§57.42. Grantee's Response to Audit Exceptions.

(a) (No Change.)

(b) A grantee may submit documentation, either in person or by mail, to the Automobile Theft Prevention Authority, 4000 Jackson Avenue Austin, Texas 78731[~~78779~~] Attention: Director.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308065
Susan Sampson
Director, ATPA
Automobile Theft Prevention Authority
Earliest possible date of adoption: January 4, 2004
For further information, please call: (512) 374-5103

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 18. GENERAL RULES CONCERNING REPORTS

The Texas Ethics Commission adopts the amendments to §18.9, relating to corrected reports filed with the commission, §18.11, relating to the definition of "substantial compliance" with regard to the waiving of late fines, and §18.13, relating to late penalties, and the repeal of §18.25, relating to the standards for waiving or reducing a late fine. Section 18.11 is adopted with changes to the text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8467). Sections 18.9 and 18.13, and the repeal of §18.25 are adopted without changes and will not be republished.

The amendment to §18.9 incorporates the standards provided by new Government Code, Section 571.0771, for submitting corrected reports and deletes the standards previously provided by Texas Ethics Commission rule. The new standards provide that a corrected report is not considered late for purposes of a late penalty if the original report was filed by the applicable filing deadline and substantially complied with the law, the corrected report is filed not later than the 14th business day after the date the person learns that the original report is inaccurate or incomplete, and the corrected report is complete and accurate.

The amendment to §18.11 defines "substantial compliance" for purposes of the new corrected report process under new Government Code, Section 571.0771. The proposed amendment defined "substantial compliance" in the same way that the rules previously defined "minor reporting errors" for purposes of waiving late fines for reports due 8 days before an election. At its November 13, 2003, meeting, the Texas Ethics Commission amended the proposed rule to delete Subdivisions (1) and (2), which provided a five percent variance standard to be used in determining substantial compliance. The Commission deleted those subdivisions because, that under the five percent standard, a filer with a large amount of activity on one report would be considered to be in substantial compliance even if there were significant errors on the report. The Commission determined that substantial compliance determinations should be made by the Commission on a case-by-case basis.

The amendment to §18.13 reflects changes to late penalties provided by H.B. No. 1606, 78th Legislature, Regular Session. Under the amended rule, the new late filing penalty for most reports filed with the Texas Ethics Commission is $500. However, if the report is a report due 8 days before an election or is the first report required to be filed following the primary or general election, the penalty is $500 for the first day and $100 for each day thereafter that the report is late.

The repeal of §18.25 repeals the rule providing standards for waiving or reducing a late fine. That rule was recently codified in Government Code, Section 571.1731, and thus the rule is unnecessary because it duplicates state law.

The following comment was received regarding the adoption of the amendment to §18.11. Fred Lewis with Campaigns For People recommended changing the five percent variance standard in §18.11 because it allowed an error rate for large campaigns that in his opinion was too high. The Commission deleted the five percent variance standard because of similar concerns.

No comments were received regarding adoption of the other sections.

1 TAC §§18.9, 18.11, 18.13

The rules are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission

§18.11. Substantial Compliance.

For purposes of §18.9 of this title (relating to Corrected Reports), a report substantially complies with applicable law if it contains only one or more reporting errors that the commission determines in context are minor.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308022
Karen Lundquist
Executive Director
Texas Ethics Commission
Effective date: December 10, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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1 TAC §18.25

The repeal of §18.25 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308023
Karen Lundquist
Executive Director
Texas Ethics Commission
Effective date: December 10, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

The Texas Ethics Commission adopts the amendment to §20.13, relating to the requirement for out-of-state political committees to file reports with the commission, and new §20.579, relating to the requirement for certain candidates for county chair to file campaign finance reports electronically with the commission, and §20.597, relating to the requirement for political committees supporting or opposing certain candidates for county chair to file campaign finance reports electronically with the commission. Sections 20.13, 20.579, and 20.597 are adopted with changes to the text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8469) and will be republished.

The amendment to §20.13 requires out-of-state political committees to file copies of their reports with the Texas Ethics Commission as required by new Election Code, Section 254.1581. The amendment would require those reports only for reporting periods in which the out-of-state political committee accepts political contributions or makes political expenditures in connection with a state or local election in Texas. The amendment would also provide that an out-of-state political committee that files its reports electronically in another jurisdiction may comply with the law by sending the Ethics Commission a letter specifying where the report may be found on the Internet. At its November 13, 2003, meeting, the Texas Ethics Commission adopted an amendment to the proposed rule that clarifies that the out-of-state political committee must specify where its report may be found on the website of the agency with which the committee is required to file its reports. The commission also adopted an amendment to the proposed rule to provide that an out-of-state political committee that does not file reports electronically in another jurisdiction may comply with Section 254.1581, Election Code, by sending a copy of the cover sheets of the report and a copy of each page on which the committee reports a contribution or expenditure accepted or made in connection with a state or local election in Texas.

The new §20.579 provides the filing schedule for certain candidates for county chair as required by Election Code, Section 257.005, and requires those reports to be filed electronically with the Texas Ethics Commission. The new rule would require January and July semiannual reports as well as reports due 30 days and 8 days before primary election day. This rule is in response to newly amended Election Code, Section 257.005, which provides that in counties with a population of 350,000 or more, candidates for county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election, and political committees that support or oppose those candidates, must file campaign finance reports and are subject to campaign finance provisions. At its November 13, 2003, meeting, the Texas Ethics Commission adopted an amendment to the proposed rule to require candidates in a runoff election to file a runoff report by the eighth day before runoff election day.

The new § 20.597 provides the filing schedule for political committees supporting or opposing certain candidates for county chair as required by Election Code, Section 257.005, and requires those reports to be filed electronically with the Texas Ethics Commission. The new rule would require January and July semiannual reports as well as reports due 30 days and 8 days before primary election day. This rule is in response to newly amended Election Code, Section 257.005, which provides that in counties with a population of 350,000 or more, candidates for county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election, and political committees that support or oppose those candidates, must file campaign finance reports and are subject to campaign finance provisions. At its November 13, 2003, meeting, the Texas Ethics Commission adopted an amendment to the proposed rule to require political committees supporting or opposing a candidate in a runoff election to file a runoff report by the eighth day before runoff election day.

The Texas Ethics Commission received the following comment regarding adoption of the amendment to § 20.13. Fred Lewis with Campaigns for People stated that the rule should clarify that the out-of-state political committee must state where the electronic report may be found on the filer's official agency website. The Texas Ethics Commission agreed with this suggestion and adopted an amendment to provide that clarification. Mr. Lewis further stated that the rule should allow the alternative filing by letter only if the filer's data is searchable on their official agency website. The commission did not adopt this suggestion because the law only requires the out-of-state political committee to file a copy of its report and does not require the report to be searchable.

No comments were received regarding adoption of the other sections.

SUBCHAPTER A. GENERAL RULES

1 TAC §20.13

The amendment to §20.13 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.13. Out-Of-State Committees.

(a) An out-of-state political committee is required to file reports for each reporting period under Subchapter F, Chapter 254, Election Code, in which the out-of-state political committee accepts political contributions or makes political expenditures in connection with a state or local election in Texas. Section 254.1581, Election Code, applies to a report required to be filed under this section. An out-of-state political committee that files reports electronically in another jurisdiction may comply with Section 254.1581, Election Code, by sending a letter to the commission within the time prescribed by that section specifying in detail where the electronic report may be found on the website of the agency with which the out-of-state political committee is required to file its reports. An out-of-state political committee that does not file reports electronically in another jurisdiction may comply with Section 254.1581, Election Code, by sending a copy of the cover sheets of the report and a copy of each page on which the committee reports a contribution or expenditure accepted or made in connection with a state or local election in Texas.

(b) An out-of-state political committee that files an appointment of campaign treasurer with a Texas filing authority is required to file reports under this title.

(c) A political committee must determine if it is an "out-of-state political committee" each time the political committee plans to make a political expenditure in Texas (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder). The determination is made as follows.

(1) Before making the expenditure (other than an expenditure in connection with a campaign for a federal office or an expenditure for a federal officeholder), the committee must calculate its total political expenditures made during the 12 months immediately preceding the date of the planned expenditure. This total does not include the planned political expenditure triggering the calculation requirement.

(2) If 80% or more of the total political expenditures are in connection with elections not voted on in Texas, the committee is an out-of-state committee.

(3) If less than 80% of the total political expenditures are in connection with elections not voted on in Texas, the committee is no longer an out-of-state committee.

(d) Section 22.7 of this title (relating to Contribution from Out-of-State Committee) contains other provisions regarding requirements applicable to recipients of contributions from out-of-state political committees.

(e) An out-of-state political committee planning an expenditure in connection with a campaign for federal office voted on in Texas is not required to make the determination required under subsection (c) of this section. However, an expenditure in connection with a campaign for federal office voted on in Texas must be included in the calculation set out in subsection (c) of this section for an out-of-state committee making an expenditure in connection with a non-federal campaign voted on in Texas.

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308041
Karen Lundquist
Executive Director
Texas Ethics Commission
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Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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SUBCHAPTER J. REPORTS BY A CANDIDATE FOR STATE OR COUNTY PARTY CHAIR

1 TAC §20.579

The new §20.579 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.579. Candidates for County Chair in Certain Counties.

(a) This section applies to a candidate for election to the office of county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election if the county has a population of 350,000 or more.

(b) The provisions of this subchapter that apply to a candidate for state party chair apply to a candidate for county chair covered by this section, except that a candidate for county chair is not required to file the pre-convention reports that a state party chair is required to file under § 20.577(c) of this title (relating to Reporting Schedule for a Candidate for State Chair).

(c) In addition to the semiannual reports due to be filed with the commission by January 15 and July 15 under § 20.577(b) of this title, a candidate for county chair covered by this section shall file the following two reports with the commission for each primary election.

(1) The first report shall be filed not later than the 30th day before primary election day. The report covers the period beginning the day the candidate's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through the 40th day before primary election day.

(2) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before primary election day and continuing through the 10th day before primary election day.

(d) In addition to other required reports, a candidate for county chair covered by this section who is in a runoff election shall file one report with the commission for the runoff election. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the primary election day and continuing through the tenth day before runoff election day.

(e) Except as provided by Section 254.036(c), Election Code, each report filed with the commission under this section must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

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

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Karen Lundquist
Executive Director
Texas Ethics Commission
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SUBCHAPTER K. REPORTS BY POLITICAL COMMITTEES SUPPORTING OR OPPOSING A CANDIDATE FOR STATE OR COUNTY CHAIR OF A POLITICAL PARTY

1 TAC §20.597

The new § 20.597 is adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to

adopt rules concerning the laws administered and enforced by the commission.

§20.597. Political Committees Supporting or Opposing Candidates for County Chair in Certain Counties.

(a) This section applies to a political committee supporting or opposing a candidate for election to the office of county chair of a political party with a nominee on the ballot in the most recent gubernatorial general election if the county has a population of 350,000 or more.

(b) The provisions of this subchapter that apply to a political committee supporting or opposing a candidate for state party chair apply to a political committee covered by this section, except that a political committee covered by this section is not required to file the pre-convention reports under §20.595(b) of this title (relating to Reporting Schedule for a Political Committee Supporting or Opposing Candidate for State Chair of a Political Party).

(c) In addition to the semiannual reports due to be filed with the commission by January 15 and July 15, a political committee covered by this section shall file the following two reports with the commission for each primary election.

(1) The first report shall be filed not later than the 30th day before primary election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this subchapter, as applicable, and continuing through the 40th day before primary election day.

(2) The second report shall be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before primary election day and continuing through the 10th day before primary election day.

(d) In addition to other required reports, a political committee covered by this section shall file one report with the commission for a runoff election in which the candidate supported or opposed by the committee is involved. The runoff election report shall be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the primary election day and continuing through the tenth day before runoff election day.

(e) Except as provided by Section 254.036(c), Election Code, each report filed with the commission under this section must be filed by computer diskette, modem, or other means of electronic transfer, using computer software provided by the commission or computer software that meets commission specifications for a standard file format.

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

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Karen Lundquist
Executive Director
Texas Ethics Commission
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Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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CHAPTER 26. POLITICAL AND LEGISLATIVE ADVERTISING

The Texas Ethics Commission adopts the amendment to §26.1, relating to the requirements for political advertising, new §26.3, relating to legislative advertising, and §26.5, relating to the disclosure statement concerning the Code of Fair Campaign Practices, and the repeal of §26.3, relating to the disclosure statement on political advertising, §26.5, relating to the disclosure statement exception for certain campaign materials, §26.7, relating to rates for political advertising, §26.9, relating to political advertising by political subdivisions, 26.11, relating the true source of a communication, §26.13, relating to misleading use of office title, §26.15, relating to the notice required on political advertising signs, §26.17, relating to legislative advertising, and §26.19, relating to the disclosure statement concerning the Code of Fair Campaign Practices. Section 26.1 is adopted with changes to the text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8471). Sections 26.3, 26.5, and the repeals are adopted without changes and will not be republished.

The amendment to §26.1 deletes the definition of "political advertising" because it duplicates and conflicts with state law. The amendment also incorporates three current rules that require political advertising to contain the words "political advertising" or a recognizable abbreviation, that require the disclosure statement to appear on one line of text or on successive lines of text on the face of the advertising, and that provide an exception for objects whose size makes printing the disclosure statement impractical. The amendment also clarifies the exception for political advertising printed on letterhead stationery. At its November 13, 2003, meeting the Texas Ethics Commission amended the proposed exception for political advertising printed on letterhead stationery to clarify that the disclosure statement is not required if the letterhead contains the full name of the person who paid for the political advertising or the full name of the political committee or candidate authorizing the political advertising.

The new §26.3 retains the rule relating to legislative advertising and redesignates §26.17 as §26.3.

The new §26.5 retains the rule relating to the disclosure statement concerning the Code of Fair Campaign Practices and redesignates §26.19 as §26.5.

The repeal of §26.3 repeals the rule relating to the disclosure statement on political advertising because it duplicates as well as conflicts with state law. The rule is unnecessary and confusing.

The repeal of §26.5 repeals the rule relating to the disclosure statement exception for certain materials. Paragraphs (2) and (3) of that rule have been recodified in §26.1 and paragraph (1) of that rule is duplicative of state law and thus unnecessary.

The repeal of §26.7 repeals the rule relating to rates for political advertising because that rule is duplicative of state law and thus unnecessary.

The repeal of §26.9 repeals the rule relating to political advertising by political subdivisions because that rule is duplicative of state law and thus unnecessary.

The repeal of §26.11 repeals the rule relating to the true source of a communication because that rule is duplicative of state law and thus unnecessary.

The repeal of §26.13 repeals the rule relating to misleading use of office title because that rule is duplicative of state law and thus unnecessary.

The repeal of §26.15 repeals the rule relating to the notice required on political advertising signs because that rule is duplicative of state law and thus unnecessary.

The repeal of §26.17 repeals the rule relating to legislative advertising because it will be redesignated as §26.3.

The repeal of §26.19 repeals the rule relating to the disclosure statement concerning the Code of Fair Campaign Practices because it will be redesignated as §26.5.

No comments were received regarding adoption of these sections.

1 TAC §§26.1, 26.3, 26.5

The amendments and new rules are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§26.1. Disclosure Statement.

(a) The disclosure statement required by Section 255.001, Election Code, must contain the words "political advertising" or any recognizable abbreviation, and must appear on one line of text or on successive lines of text on the face of the political advertising.

(b) A disclosure statement is not required on political advertising printed on letterhead stationery if the letterhead contains the full name of one of the following:

(1) the person who paid for the political advertising;

(2) the political committee authorizing the political advertising; or

(3) the candidate authorizing the political advertising.

(c) A disclosure statement is not required on campaign buttons, pins, or hats, or on objects whose size makes printing the disclosure impractical.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308026
Karen Lundquist
Executive Director
Texas Ethics Commission
Effective date: December 10, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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1 TAC §§26.3, 26.5, 26.7, 26.9, 26.11, 26.13, 26.15, 26.17, 26.19

The repeals are adopted under Government Code, Chapter 571, Section 571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

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

Filed with the Office of the Secretary of State on November 20, 2003.

TRD-200308027
Karen Lundquist
Executive Director
Texas Ethics Commission
Effective date: December 10, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 463-5800

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PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 87. NOTARY PUBLIC
SUBCHAPTER A. NOTARY PUBLIC QUALIFICATIONS

1 TAC §87.22

The Office of the Secretary of State adopts an amendment to §87.22, Subchapter A concerning notary public qualifications. The amendment is adopted without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8731). The purpose of the amendment is to implement a change to Chapter 406 of the Government Code that was made by the 78th Texas Legislature in Senate Bill 1087, which was effective on September 1, 2003. Section 406.005 of the Government Code was amended to remove the requirement that the Statement of Officer on the notary public application be executed before an officer authorized to administer oaths.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Texas Government Code, §406.023(a) and §2001.004(1), which provide the Secretary of State with the authority to prescribe and adopt rules. The amendment affects §406.005 of the Government Code.

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308038
Luis Saenz
Assistant Secretary of State
Office of the Secretary of State
Effective date: December 11, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 475-0775

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PART 5. TEXAS BUILDING AND PROCUREMENT COMMISSION

CHAPTER 113. PROCUREMENT DIVISION
SUBCHAPTER A. PURCHASING

1 TAC §113.2, §113.4

The Texas Building and Procurement Commission adopts amendments to Title 1, TAC, Chapter 113, Procurement Division; Subchapter A, Purchasing, §113.2, relating to purchasing definitions, and §113.4, relating to the Centralized Master Bidders List, with non-substantive changes to the text published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7889). No public comments were received.

The amendments to §113.2 update purchasing definitions by adding a definition for "auxiliary enterprise" to reflect the requirements of HB 3042; expand definitions related to existing statutory purchasing preferences that were amended by HB 845; and replaces the term qualified information systems vendor with catalog information systems vendor to reflect statutory changes made in HB 3042.

The changes from the proposed text of §113.2 replaces references to the Texas Natural Resource Conservation Commission(TNRCC) with Texas Commission on Environmental Quality (TCEQ) and updates a cite to the Texas Education Code.

The amendments to §113.4 replaces the term Qualification of Information Systems Vendors with Catalog of Information Systems Vendors to reflect statutory changes made to Chapter 2157 of the Government Code by HB 3042.

The changes to the proposed text as published in the September 12, 2003, Texas Register restore references to the Commission rather than TBPC.

The amendments are adopted under the authority of the Texas Government Code, §§2152.003, 2155.267, 2155.444, 2155.445, 2157.126, 2157.066, Texas Education Code, §44.031, and Local Government Code, §271.101.

The following codes are affected by these rules: Texas Government Code, Chapters 791, 2151, 2152, 2155, 2157, and 2175, Texas Education Code, Chapters 44 and 61, Health and Safety Code, Chapter 534, and Local Government Code 271.

§113.2. Definitions.

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

(1) Adopted uniform standards and specifications--Specifications and standards developed by nationally recognized standards-making associations that are evaluated and adopted by the specifications and standards program.

(2) Advisory groups--A group that advises and assists the standards and specification program in establishing specifications. The advisory group may include representatives from federal, state and local governments, user groups, manufacturers, vendors and distributors, bidders, associations, colleges, universities, testing laboratories and others with expertise and specialization in particular product area.

(3) Agency--A state agency as the term is defined under the Texas Government Code, Title 10, §2151.002.

(4) Agent of record--An employee or official designated by a qualified cooperative entity as the individual responsible to represent the qualified entity in all matters relating to the program.

(5) Approved products list--The list is also referred to as the approved brands list or qualified products list. It is a specification developed by evaluation brands and models of various manufacturers and listing those determined to be acceptable to meet the minimum level of quality. Testing is completed in advance of procurement to determine which products comply with the specifications and standards requirements.

(6) Auxiliary enterprise--A business activity that is conducted at a state agency, provides a service to the agency, and is not paid with appropriated money. The Commission's authority does not extend to a purchase made by an agency for an auxiliary enterprise.

(7) Award--The act of accepting a bid, thereby forming a contract between the state and a bidder.

(8) Bid--An offer to contract with the state, submitted in response to a bid invitation issued by the commission.

(9) Bid deposit--A deposit required of bidders to protect the state in the event a low bidder attempts to withdraw its bid or otherwise fails to enter into a contract with the state. Acceptable forms of bid deposits are limited to: cashier's check, certified check, or irrevocable letter of credit issued by a financial institution subject to the laws of Texas and entered on the United States Department of the Treasury's listing of approved sureties; a surety or blanket bond from a company chartered or authorized to do business in Texas.

(10) Bid sample--A sample required to be furnished as part of a bid, for evaluating the quality of the product offered.

(11) Bidder--An individual or entity that submits a bid. The term includes anyone acting on behalf of the individual or other entity that submits a bid, such as agents, employees, and representatives.

(12) Blanket bond--A surety bond which provides assurance of a bidder's performance on two or more contracts in lieu of separate bonds for each contract. The amount for a blanket bond shall be established by the commission based on the bidder's annual level of participation in the state purchasing program.

(13) Board--The governing body of a county or local school district.

(14) Brand name--A trade name or product name which identifies a product as having been made by a particular manufacturer.

(15) Centralized master bidders list (CMBL)--A list maintained by the commission containing the names and addresses of prospective bidders and catalog information systems vendors.

(16) Consumable procurement budget--That portion of an agency's budget as identified by the comptroller's expenditure codes attributable to consumable supplies, materials, and equipment.

(17) Cooperative purchasing program--A program to provide purchasing services to qualified cooperative entities, as defined herein.

(18) Debarment--An exclusion from contracting or subcontracting with state agencies on the basis of any cause set forth in §113.102 of this title (relating to Vendor Performance and Debarment), commensurate with the seriousness of the offense, performance failure, or inadequacy to perform.

(19) Director--The director of the commission's purchasing division.

(20) Distributor purchase--purchase of repair parts for a unit of major equipment that are needed immediately or as maintenance contracts for laboratory/medical equipment.

(21) Emergency purchase--A purchase of goods or services so badly needed that an agency will suffer financial or operational damage unless the items are secured immediately.

(22) Environmentally sensitive products--Products that protect or enhance the environment, or that damage the environment less than traditionally available products.

(23) Equivalent product--A product that is comparable in performance and quality to the specified product.

(24) Escalation clause--A clause in a bid providing for a price increase under certain specified circumstances.

(25) Formal bid--A written bid submitted in a sealed envelope in accordance with a prescribed format, or an electronic data interchange transmitted to the commission in accordance with procedures established by the commission.

(26) Group purchasing program--A purchasing program that offers discount prices to two or more state agencies, which is formed as a result of interagency or interlocal cooperation and follows all applicable statutory standards for purchases.

(27) Informal bid--An unsealed, competitive bid submitted by letter, telephone, telegram, or other means.

(28) Invitation for bids (or IFB)--A written request for submission of a bid; also referred to as a bid invitation.

(29) Late bid--A bid that is received at the place designated in the bid invitation after the time set for bid opening.

(30) Level of quality--The ranking of an item, article, or product in regard to its properties, performance, and purity.

(31) List of approved equipment--A list of items available under term contracts for purchase by school districts through the commission pursuant to the Texas Education Code, §21.901.

(32) Local government--a county, municipality, special district, school district, junior college district, regional planning commission, or other political subdivision of the state pursuant to Local Government Code, §271.101.

(33) Manufacturer's price list--A price list published in some form by the manufacturer and available to and recognized by the trade. The term does not include a price list prepared especially for a given bid.

(34) Multiple award contract (as it applies to Multiple Award Schedule Contracts)--an award of a contract for an indefinite amount of one or more similar goods or services from a vendor.

(35) Multiple award contract procedure--A purchasing procedure by which the commission establishes one or more levels of quality and performance and makes more than one award at each level.

(36) Non-competitive purchase--A purchase of goods or services (also referred to as "spot purchase") that does not exceed the amount stated in §113.11(c)(1) of this title (relating to Delegated Purchases).

(37) Notice of award--A letter signed by the director or his designee which awards and creates a term contract.

(38) Open market purchase--A purchase of goods, usually of a specified quantity, made by buying from any available source in response to an open market requisition.

(39) Performance bond--A surety bond which provides assurance of a bidder's performance of a certain contract. The amount for the performance bond shall be based on the bidder's annual level of potential monetary volume in the state purchasing program. Acceptable forms of bonds are those described in the definition for "bid deposit".

(40) Perishable goods--Goods that are subject to spoilage within a relatively short time and that may be purchased by agencies under delegated authority.

(41) Post-consumer materials--Finished products, packages, or materials generated by a business entity or consumer that have served their intended end uses, and that have been recovered or otherwise diverted from the waste stream for the purpose of recycling.

(42) Pre-consumer materials--Materials or by-products that have not reached a business entity or consumer for an intended end use, including industrial scrap material, and overstock or obsolete inventories from distributors, wholesalers, and other companies. The term does not include materials and by-products generated from, and commonly reused within, an original manufacturing process or separate operation within the same or a parent company.

(43) Proprietary--Products or services manufactured or offered under exclusive rights of ownership, including rights under patent, copyright, or trade secret law. A product or service is proprietary if it has a distinctive feature or characteristic which is not shared or provided by competing or similar products or services.

(44) Public bid opening--The opening of bids at the time and place advertised in the bid invitation, in the presence of anyone who wishes to attend. On request of any person in attendance, bids will be read aloud.

(45) Purchase orders--

(A) Open market purchase order--A document issued by the commission to accept a bid, creating an open market purchase contract.

(B) Automated contract purchase order--A release order issued by the commission under an existing term contract, and pursuant to a requisition from a qualified ordering entity.

(C) Non-automated purchase order--A release order issued by an agency as a non-automated term contract, and pursuant to a requisition by the qualified ordering entity.

(46) Purchasing functions--The development of specifications, receipt and processing of requisitions, review of specifications, advertising for bids, bid evaluation, award of contracts, and inspection of merchandise received. The term does not include invoice, audit, or contract administration functions.

(47) Information systems vendor catalog offer--A request for offers of prices from catalog vendors (CISV).

(48) Qualified cooperative entity--An entity that qualifies for participation in the cooperative purchasing program:

(A) A county, municipality, school district, special district, junior college district, or other legally constituted political subdivision of the state that is a local government.

(B) Mental health and mental retardation community centers in Government Code, §2155.202, that receive grants-in-aid under the provisions of Subchapter B, Chapter 534, Health and Safety Code.

(C) An assistance organization as defined in Government Code, §2175.001, that receive any state funds.

(D) A political subdivision, under Chapter 791, Government Code.

(49) Qualified Ordering Entity--A state agency as the term is defined under the Texas Government Code, Title 10, §2151.002, or

an entity that qualifies for participation in the cooperative purchasing program as defined in Local Government Code, Subchapter D, §271.081.

(50) Recycled material content--The portion of a product made with recycled materials consisting of pre-consumer materials (waste), post-consumer materials (waste), or both.

(51) Recycled materials--Materials, goods, or products that contain recyclable material, industrial waste, or hazardous waste that may be used in place of raw or virgin materials in manufacturing a new product.

(52) Recycled product--A product, including recycled steel that meets the requirements for recycled material content as prescribed by the rules established by the Texas Commission on Environmental Quality in consultation with the Texas Building and Procurement Commission.

(53) Remanufactured product--A product that has been repaired, rebuilt, or otherwise restored to meet or exceed the original equipment manufacturer's (OEM) performance specifications; provided, however, the warranty period for a remanufactured product may differ from the OEM warranty period.

(54) Request for proposal--A written request for offers concerning goods or services the state intends to acquire by means of the competitive sealed proposal procedure.

(55) Requisition--

(A) Open market purchase requisition--An initiating request from an agency describing needs and requesting the commission to purchase goods or services to satisfy those needs.

(B) Term contract purchase requisition--A request from a qualified ordering entity for delivery of goods under an existing term contract.

(56) Responsible vendor--A vendor who has the capability to perform all contract requirements in full compliance with applicable state law, ethical standards, and applicable commission rules.

(57) Resolution--Document of legal intent adopted by the governing body of a qualified cooperative entity that evidences the qualified cooperative entity's participation in the cooperative purchasing program.

(58) Reverse Auction--a real time bidding procedure that is Internet dependent and which is conducted at a pre-scheduled time and Internet location in which multiple suppliers, anonymous to each other, submit bids for designated goods or services.

(59) Schedule--a list of multiple award contracts from which agencies may purchase goods and services.

(60) Scheduled purchase--A purchase with a prescheduled bid opening date, allowing the commission to combine orders for goods.

(61) Sealed bid--A formal written bid.

(62) Solicitation--An invitation for bids or a request for proposals.

(63) Specification--A concise statement of a set of requirements to be satisfied by a product, material or service, indicating whenever appropriate the procedures to determine whether the requirements are satisfied.

(64) Standard specification--A description of what the purchaser requires and what a bidder or proposer must offer.

(65) Successor-in-interest--Any business entity that has ownership similar to a business entity. For purposes of §113.102 of this title (relating to Vendor Performance and Debarment), it shall be presumed that a business entity that employs, or is associated with, any partner, member, officer, director, responsible managing officer, or responsible managing employee, of a business entity that was previously debarred is a successor-in-interest.

(66) Tabulation of bids--The recording of bids and bidding data for purposes of bid evaluation and recordkeeping.

(67) Term contract purchase--A purchase by a qualified ordering entity under a term contract, which established a source of supply for particular goods at a given price for a specified period of time.

(68) Testing--an element of inspection involving the determination, by technical means, of the properties or elements of item(s) or component(s), including function operation.

(69) Texas Bidder-As applies to the use of the preference to "Texas and United States Products and Texas Services", "Texas Bidder" means a business:

(A) incorporated in this state;

(B) that has its principal place of business in this state; or

(C) that has an established physical presence in this state.

(70) Texas uniform standards and specification--Standards and specifications prepared and published by the standards and specifications program of the commission.

(71) Total expenditures on products with recycled material content, remanufactured products, and environmentally sensitive products--The total direct acquisition costs (vendor selling price plus delivery costs) of all such products.

(72) Unit price--The price of a selected unit of a good or service, e.g., price per ton, per labor hour, or per foot.

(73) Using agency--An agency of government that requisitions goods or services through the commission.

(74) Vendor--A supplier of goods and services to the state.

§113.4. Centralized Bidder's List.

(a) The commission maintains the Centralized Master Bidders List (CMBL) of the names and addresses of vendors which have registered for inclusion on the CMBL. The CMBL is maintained for the state's use in obtaining competitive bids for purchases and for registering vendors who wish to be designated as qualified information systems vendors. Bid invitations and requests for proposals shall be transmitted to vendors on the CMBL for the solicited commodity and/or service designated by the vendor for open market, term contracts, competitive sealed proposal acquisitions and delegated purchases in excess of the non-competitive bid limit.

(b) Registration for the Centralized Master Bidders List is an on line process with a vendor managed web based system. The established fee is to be paid annually.

(c) It is the vendor's responsibility to maintain their CMBL profile to ensure correct information for receipt of bids based on products or services which can be provided for selected districts for the State of Texas.

(d) A vendor may be administratively removed from the CMBL for one or more of the following reasons:

(1) failing to pay or unnecessarily delaying payment of damages assessed by the commission;

(2) failing to remit the annual CMBL fee; or

(3) any factor set forth in Government Code, Chapter 2155.

(e) A vendor which has been removed from the CMBL shall not be reinstated until expiration of the period for which the vendor was removed and approval is granted.

(f) An error in addressing a bid invitation or request for proposal or a failure of the post office to deliver the solicitation will not be sufficient reason to require the commission to reject all other bids or proposals.

(g) State agencies shall use the CMBL to select bidders for competitive bids or proposals and to the fullest extent possible for purchases exempt from the commission's purchasing authority. This requirement does not apply to the Texas Department of Transportation or to an institution of higher education as defined by §61.003, Education Code, but an institution of higher education should use the CMBL when possible.

(h) As set forth in Texas Government Code, §2155.269, state agencies may waive the requirement to solicit only from bidders listed on the Centralized Master Bidders List (CMBL) by obtaining approval from the agency head or designee to add non-CMBL bidders to the final bid list. Non-CMBL bidders can be added to the final bid list for specific solicitations where the requirement to solicit only CMBL bidders is not warranted, such as to increase competition. This does not apply to purchases in §113.19 of this title (relating to Catalog of Information Systems Vendors (CISV).

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308031
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-4257

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1 TAC §113.11

The Texas Building and Procurement Commission adopts amendments to Title 1, TAC, Chapter 113, Procurement Division; Subchapter A, Purchasing, §113.11 relating to Delegated Purchases with changes to the text published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7894). No public comments were received.

The changes to the published text are required to restore references in the rules to the Commission rather than to TBPC.

Amendments to §113.11 reflect changes to Chapter 2155 of the Government Code related to TBPC's procurement oversight authority included in HB 3042. The proposed amendments serve to eliminate the previous statutory exemption from TBPC oversight for purchases of items and goods for resale. As a result, agencies that make purchases of items and goods for resale are subject to TBPC procurement requirements and oversight that govern other types of purchases.

The amendments are adopted under the authority of the Texas Government Code, §§2152.003, 2155.141, 2155.444, 2155.4441, 2155.445, 2157.126, and 2157.066.

The following codes are affected by these rules: Texas Government Code, Chapters 2152, 2155 and 2157.

§113.11. Delegated Purchases.

(a) General delegation. The following purchasing functions are delegated to agencies:

(1) commodity purchases of goods, including goods for resale that do not exceed $25,000;

(2) emergency purchases

(3) purchases of perishable items;

(4) purchases of services, including services for resale, the estimated cost of which does not exceed $100,000;

(5) purchases of publications directly from the publisher;

(6) fuel, oil, and grease purchases; and

(7) distributor purchases.

(b) Adherence to ethical standards. Employees of agencies who perform purchasing functions under delegated authority shall adhere to the same ethical standards required of commission employees, and shall avoid all conflict of interest in their purchasing activities.

(c) Provisions generally applicable to delegated purchases.

(1) Competitive bidding is not required for purchases of $2,000 or less.

(2) All bids must be obtained from sources which normally offer for sale the merchandise being purchased.

(3) Items purchased under delegated authority may not include scheduled items, items available under a term contract (unless purchased in quantities less than minimum ordering quantities shown in contract), or any item required by law to be purchased from a particular source.

(4) The commission must solicit formal bids from all eligible vendors on the centralized master bidders list (CMBL) when making purchases in excess of $25,000. The commission waives the requirement for state agencies to solicit bids from all eligible vendors on the list when making purchases under subsection (e) of this section. State agencies must solicit from all eligible vendors on the CMBL when making service purchases in excess of $100,000 that the commission has delegated to an agency.

(d) Withdrawal of delegated purchase authority. The commission will verify compliance with established procedures for delegated purchases and may withdraw delegated purchase authority in whole or part from an agency for continued violations after giving adequate warning. The commission will report to the governor, lieutenant governor, speaker of the house of representatives, and Legislative Budget Board the findings that a state agency has not followed the commission's rules or the laws related to the delegated purchases.

(e) Provisions applicable to particular delegated purchases.

(1) Commodity purchases. Commodity purchases may be made in accordance with the following provisions:

(A) Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from historically underutilized businesses (HUBS), on all commodity purchases in excess of $2,000 and not over $10,000. Agencies must meet competitive bidding requirements and may supplement the list of bidders obtained from the CMBL and HUBs Directory with non-CMBL bidders if the purchase price does not exceed $5,000. Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from HUBs, on all commodity purchases in excess of $10,000 and not over $25,000. Agencies may refer to the commission's HUB Directory, which is maintained and accessible electronically, to locate HUBs. If an agency is unable to locate two HUBs from the commission's HUB Directory or other available sources, the agency must make a written notation in the purchase file of all reference sources used.

(B) Agencies must attempt to provide a copy of the bid to the last vendor who held the contract in addition to the informal bid requirement.

(2) Emergency purchases. The commission will approve payment for emergency purchases in accordance with the following provisions.

(A) At least three informal bids must be obtained whenever possible on all purchases in excess of $10,000.

(B) For an emergency purchase of goods or services exceeding $25,000, an agency must send a full written explanation of the emergency along with other documentation required by the commission for prepayment approval.

(C) The agency may contact the commission for advice and assistance in the handling of emergency purchases. The commission may not approve an invoice for an emergency purchase unless the agency has complied with the foregoing requirements. This rule does not apply to purchases made in accordance with the Texas Government Code, Chapter 418 (Texas Disaster Act of 1975).

(3) Perishable items. Purchases made under this authority must be obtained through competitive bids, and appropriate documentation must be forwarded to the commission for approval.

(4) Services. Purchases of services estimated to cost no more than $100,000 per year per contract are delegated and must be obtained through a competitive selection process, and appropriate documentation must be forwarded to the commission for approval.

(A) An agency is required to submit documentation to the commission for proprietary purchases of services over $25,000 and for purchases expected to cost more than $25,000 per year.

(B) Agencies must attempt to obtain at least three informal bids, including a minimum of two bids from HUBs, on all service purchases in excess of $2,000 and not over $10,000.

(C) Agencies must meet competitive bidding requirements and may supplement the list of bidders obtained from the CMBL and HUBs Directory with non-CMBL bidders if the purchase price does not exceed $5,000.

(D) Agencies must attempt to obtain at least three formal bids, including a minimum of two bids from HUBs, on all service purchases in excess of $10,000 and not over $25,000. Agencies may refer to the commission's HUB Directory, which is maintained and accessible electronically, to locate HUBs. If an agency is unable to locate two HUBs from the commission's HUB Directory or other available sources, the agency must make a written notation in the purchase file of all reference sources used. For purchases of services estimated up to $25,000, state agencies shall solicit a minimum of three bids (two must be HUBs,) from CMBL and HUB Directory Vendors located in the agencies' geographic region.

(E) For purchases of services estimated more than $25,000 and less than $100,000, state agencies shall, as a minimum, solicit bids from all CMBL and HUB Directory Vendors located in the agencies' geographic region.

(F) For purchases of services estimated to cost more than $100,000 per year, the commission must review any proposed specifications or statements of work and determine whether the commission or the agency should make the advertisement and award. The commission may determine that the service should be advertised to the entire CMBL rather than to only those vendors in the agency's geographical area. If no competitive advantage would be obtained by having the commission make the advertisement and award, the commission may permit the agency to do so as a delegated purchase.

(5) Publications. An agency may purchase publications directly from the publisher when such publications are not available through statewide contract or through competitive bidding. Direct publication orders shall be made by following guidelines established by the commission. Examples of direct publications include, but are not limited to:

(A) foreign publications;

(B) out-of-print or rare publications;

(C) back issues of magazines, journals, and newspapers;

(D) publications of professional societies;

(E) prepared films, tapes, and discs (audio, visual, or both);

(F) computer software;

(G) collections of any of the foregoing items, and microfilm or microfiche copies of any of the foregoing items; and

(H) Library of Congress cards.

(6) Fuel, oil, and grease. An agency may make fuel, oil, and grease purchases at service stations or in bulk. Fuel, oil, and grease purchases shall be made by following guidelines suggested by the commission. Non-competitive and emergency purchase procedures apply to purchases at service stations.

(7) Distributor purchases. An agency may make distributor purchases by following guidelines established by the commission. An agency may not purchase any of the following on a distributor purchase basis: consumable items; labor of any kind (see "service"); "will fit" parts (non-OEM); parts for stock; contract items; electrical parts for electric motors; electrical switch panel boards; electrical accessories.

(f) Specific delegations. The authority to grant specific delegations resides with the director. The application method, review process, delegation finding, and appeal process will be set forth by policy statement of the director. At a minimum, state agencies granted specific delegations shall meet the following criteria:

(1) procurement audit standards set forth in §113.18 of this title (relating to Auditing of Purchase Documents and Payment Vouchers);

(2) minimum training and certification standards established in the State Procurement Manual; and

(3) approved processes and procedures for the specific type of delegation being requested. All processes and procedures are subject to the prior review, revision and approval of the director.

(g) Protest Procedures. State agencies shall adopt protest procedures and submit a copy to the commission during the post-payment audit of the agency's purchasing documents or upon request by the commission.

(h) Procurement Plan. State agencies shall formulate an agency procurement plan that identifies an agency's management controls and purchasing oversight authority in accordance with the policy guidance contained in the Commission's Procurement Manual. An agency must submit a copy of the procurement plan during the commission's audit of the agency's purchasing documents or upon request by the commission.

(i) Debarred Vendors. State agencies shall ensure that debarred vendors do not participate in state contracting and will establish procedures to ensure awards are not made to debarred vendors.

(j) Reporting Purchasing Activity under Delegated Authority. State agencies will report to the commission, not later than May 1 of each year regarding the previous six-month period and on November 1 of each year regarding the preceding fiscal year, information related to delegated purchasing activity for goods and services in the form prescribed by the commission.

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

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Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-4257

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1 TAC §113.12

The Texas Building and Procurement Commission adopts the repeal of Title 1, TAC, Chapter 113, §113.12, concerning Research in Higher Education without changes to the proposal which was published in the September 12, 2003, issue of the Texas Register (28 TexReg 7896).

The repeal of §113.12 is required to reflect statutory changes made by the 77th Legislature related to procurement authority of institutions of higher education. Pursuant to the Texas Education Code, §51.9335, institutions of higher education are exempt from TBPC purchasing requirements; therefore, this rule is repealed.

The rule will function more effectively because is more correctly reflects the intent of the statutes.

There were no public comments.

The repeal of §113.12 is proposed under the authority of the Texas Education Code, §51.9335 and the Texas Government Code, §2152.003.

The following codes are affected by this rule: Texas Government Code, Chapters 2152 and 2155, and Texas Education Code, Chapter 51.

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

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Cynthia de Roch
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1 TAC §113.17

The Texas Building and Procurement Commission adopts amendments to Title 1, TAC, Chapter 113, Procurement Division; Subchapter A, Purchasing, §113.17 Multiple Award Schedule with changes to the text published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7889). No public comments were received.

The changes to the published text are required to restore references in the rules to the Commission rather than to TBPC.

Amendments to §113.17 update the rules to reflect statutory changes in HB 3042 which give TBPC the authority to collect a sales rebate from vendors who provide goods and services via multiple award schedule contracts.

The amendments are adopted under the authority of the Texas Government Code, §2152.003 and §2155.267.

The following codes are affected by these rules: Texas Government Code, Chapters 2152 and 2155.

§113.17. Multiple Award Schedule.

(a) Pursuant to Government Code, §2155.502, the Commission is directed to develop a schedule of multiple award contracts.

(b) All contracts on schedule shall meet the following standards:

(1) Have been previously awarded using a competitive process by the federal government or any other governmental entity in any state;

(2) Have agreed to the State of Texas General Terms and Conditions, including rules adopted by the commission;

(3) Comply with all applicable State and federal procurement requirements; and

(4) Any other applicable federal requirements.

(c) The Director of Procurement or successor is authorized to take actions necessary to implement this rule.

(d) Information on how to register for or use this schedule is to be listed on the Texas Building and Procurement Commission website.

(e) The Commission may collect a sales rebate from a vendor under a contract developed as a multiple award schedule. The rebate shall be based on a percentage of a vendor's quarterly sales and shall not exceed the current Industrial Fund Fee (IFF) assessed by the Federal General Services Administration (GSA).

(f) If a purchase resulting from the rebate is made in whole or in part with federal funds, the appropriate portion of the rebate is to be reported to the purchasing agency for reporting and reconciliation purposes with the appropriate federal funding agency.

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

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Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-4257

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1 TAC §113.20

The Texas Building and Procurement Commission adopts amendments to Title 1, TAC, Chapter 113, Procurement Division; Subchapter A, Purchasing, §113.20 Group Purchasing Program with changes to the text published in the September 12, 2003, issue of the *Texas Register* (28 TexReg 7889). No public comments were received.

The changes to the published text are required to restore references in the rules to the Commission rather than to TBPC.

Amendments to §113.20 update current rules to reflect statutory changes made by the 77th Legislature related to procurement authority of institutions of higher education. This amendment removes any reference to institutions of higher education from the rule to reflect the fact that institutions of higher education are exempt from TBPC purchasing requirements pursuant to the Texas Education Code, §51.9335.

The amendments are adopted under the authority of the Texas Government Code, §2152.003 and Texas Education Code, §51.9335.

The following codes are affected by these rules: Texas Government Code, Chapters 2152, 2155 and Texas Education Code, Chapter 51.

§113.20. Group Purchasing Program.

(a) A state agency may purchase materials, supplies, or equipment through group purchasing programs in accordance with this section.

(b) Before making a particular purchase through a group purchasing program that costs more than $100,000, a state agency must notify the commission in writing that the purchase is being considered. The notification must be signed by the chief purchasing officer for the state agency. The notification must include a complete description of the purchase, the vendor's name, quantity and price information, the terms and conditions of the contract, and any other information required by the commission.

(c) If the commission determines that a better value is available through the commission, it will so inform the requesting state agency within ten working days after receipt of the notification. Upon receipt of information that a better value is available, the state agency shall utilize established purchasing procedures for the purchase including good faith effort compliance §§111.11-111.28 of this title (relating to Historically Underutilized Businesses). If the state agency does not receive such notification within ten working days, it may proceed with the purchase.

(d) A state agency participating in group purchasing programs shall adhere to the same ethical standards required of commission employees as set forth in §111.4 of this title (relating to Ethical Standards).

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

Filed with the Office of the Secretary of State on November 21, 2003.

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Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
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For further information, please call: (512) 463-4257

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PART 8. TEXAS JUDICIAL COUNCIL

CHAPTER 173. INDIGENT DEFENSE GRANTS

SUBCHAPTER D. ADMINISTERING GRANTS

1 TAC §173.307

The Task Force on Indigent Defense (Task Force) is a permanent Standing Committee of the Texas Judicial Council. The Task Force adopts an amendment to §173.307 of the Texas Administrative Code to delete the subsection that requires counties to seek prior approval for any discretionary grant budget adjustments consisting of reallocations of funds among or within budget categories in excess of ten percent of the original budget line item transferred to or from. The amendment is adopted without changes to the proposed text as published in the August 15, 2003 issue of the *Texas Register* (28 TexReg 6446).

By eliminating this provision, Task Force grant adjustments will be governed by the Uniform Grant Management Standards (UGMS) adopted by reference in §173.7(b)(1). The UGMS provision related to budget adjustments is contained in Section III, Sub-part C and requires counties to receive prior approval whenever the transfers among direct cost categories exceed ten percent of the current total annual approved budget, whenever the awarding agency's share exceeds $100,000. For grants of $100,000 or less, the Task Force may, at its option, require prior approval of transfers of funds among direct cost categories when the amount transferred exceeds five percent of the total annual budget. The UGMS also require advance approval of any budget adjustment that would result in the need for additional funding or any transfer of funds allocated to training allowances. Chapter 173 establishes the guidelines for the administration of a grant program for counties to improve indigent defense services. The adoption of the amendment to §173.307 will reduce administration time for the Task Force and counties and was a recommendation of the Task Force's internal auditor.

No comments were received regarding adoption of the rules.

The amendment to §173.307 is adopted under the authority of Texas Government Code § 71.062 (Technical Support; Grants), concerning the grant and aid program, that provides the Task Force authority to provide grants to assist counties to improve indigent defense practices in the state and to promote compliance with state law concerning indigent defense practices. The Task Force interprets Texas Government Code § 71.062 to require the Task Force to adopt by rule the guidelines for administering the grant program.

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

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308047
Wesley Shackelford
Special Counsel to the Task Force on Indigent Defense
Texas Judicial Council
Effective date: December 11, 2003
Proposal publication date: August 15, 2003
For further information, please call: (512) 936-6994

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 16. AQUACULTURE

4 TAC §16.4

The Texas Department of Agriculture (the department) adopts new §16.4, concerning fees charged to aquaculturists engaged in shrimp production, without changes to the proposal published in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9023). New §16.4 is adopted to implement the collection of fees for the purpose of funding the Texas shrimp marketing assistance program (the program) in accordance with the passage of House Bill 1858, 78th Texas Legislature, 2003, which amended the Texas Agriculture Code (the Code), §134.014. Amendments to the Code, §134.014 require the department to collect an annual surcharge on the license fee for aquaculture facilities producing shrimp for the purpose of funding the program.

New §16.4 establishes the surcharge for the program and establishes the method by which the department will collect the surcharge. Each aquaculturist who produces shrimp will be affected by the new rule. The amount of the surcharge is based on the number of surface acres each aquaculture facility dedicates to shrimp production. The amount of the surcharge is $8.00 for each surface acre dedicated to shrimp production. The surcharge will be collected both from new applications to the department for a new aquaculture facility license and from existing aquaculture facility licensees. To initially fund the program, the department will collect a one-time surcharge from all existing aquaculture licensees that produce shrimp. All subsequent surcharges will be collected with renewals scheduled after September 1, 2005.

No comments were received on the proposal.

New §16.4 is adopted under the Texas Agriculture Code (the code), §134.005, which provides the department with the authority to adopt rules as necessary for carrying out the department's duties under the code, Chapter 134; and the code §134.014, as amended by HB 2470, which authorizes the department to set and collect a surcharge on the annual license fee for aquaculture facilities engaged in shrimp production.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308061
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 14, 2003
Proposal publication date: October 17, 2003
For further information, please call: (512) 463-4075

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CHAPTER 18. ORGANIC STANDARDS AND CERTIFICATION

The Texas Department of Agriculture (the department) adopts the repeal of §§18.1 - 18.20, concerning organic standards and certification procedures, without changes to the proposal published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9150). The repeal of §§18.1 - 18.20 is adopted in order to comply with federal regulations that require all organic products in the United States to be certified according to standards and procedures established by the United States Department of Agriculture National Organic Program. The repeal of §§18.1 - 18.20 allows the department to adopt new regulations consistent with the federal regulations. The department also adopts new §§18.1 - 18.2, 18.100 - 18.103, 18.105, 18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272, 18.290, 18.300 - 18.310, 18.400 - 18.406, 18.600 - 18.606, 18.660 - 18.662, 18.670 - 18.672, 18.680, 18.681, and 18.700 - 18.706, concerning organic certification standards and procedures, registration of organic businesses, transitional certification, and fees. Sections 18.2, 18.601 - 18.603, 18.605 and 18.702 are adopted with changes to the proposed text published in the October 24, 2003, issue of the *Texas Register* (28 TexReg 9150). Sections 18.1, 18.100 - 18.103, 18.105, 18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272, 18.290, 18.300 - 18.310, 18.400 - 18.406, 18.600, 18.604, 18.606, 18.660 - 18.662, 18.670 - 18.672, 18.680, 18.681, 18.700, 18.701 and 18.703 - 18.706 are adopted without changes and will not be republished.

The new sections enable the department to continue providing organic certification in accordance with the United States Department of Agriculture National Organic Program, to create a registration program for organic businesses in the state, to continue a transitional certification program and to establish a fee schedule that recovers the costs of administering the program as required by the Texas Agriculture Code, §12.0144 and §18.006, and directed by the Texas Legislature, 78th Session, 2003. Changes to the proposed text were made to incorporate amendments to the federal regulations that were adopted in the

Federal Register during the comment period, to make corrections in punctuation or spelling in the proposed rule, and to clarify fee calculations. In §18.2 the definition for "mulch" contained a reference to the National List, which was changed to refer to the list of synthetic substances allowed for use in organic production in this chapter. Changes made in §§18.601 - 18.603 and §18.605 were made to add substances to the list (necessitating renumbering parts of the sections), to modify annotations for some substances, to make minor corrections for consistency with the wording of the federal regulations, to correct spelling and punctuation errors and to rearrange the lists alphabetically. In §18.601 understood subsection (a) was revised to clarify restrictions on the use of listed substances, and the following substances were added to the list: copper sulfate (as an algicide and for tadpole shrimp control), ozone gas, peracetic acid (as a disinfectant and for disease control), and EPA List 3 Inerts (for use in passive pheromone dispensers). Also, the word "demisters" was changed to "demossers," the allowed use for pheromones was expanded to "insect management," the annotation for hydrated lime was deleted and the listing for ethylene was modified to read "ethylene gas" to reflect revisions made in the federal regulation. In §18.602 calcium chloride was added to the list, the annotation for sodium nitrate was revised to allow additional uses, and the spelling of strychnine was corrected. In §18.603, DL-methionine was added to the list, the spelling of chlorhexidine was corrected, the annotation for lime was corrected, and an incorrect reference to the Federal Drug Administration was revised to Food and Drug Administration. Also, the listing for trace minerals was revised, (deleting the examples copper sulfate and magnesium sulfate) because all FDA approved trace minerals are allowed, not just the two minerals listed as examples. Section 18.605 was revised to include agar-agar, certain animal enzymes, calcium sulfate, carageenan, gluco delta-lactone, tartaric acid and cellulose. The allowed uses for ethylene were expanded, the annotation for potassium hydroxide was changed and the spelling of sodium was corrected. Under §18.702(f)(2)(B), a new clause was added to allow a producer to certify land that is not in crop production as "in crop production" if this would result in lower certification fees. The fee structure for land not in crop production was devised to establish more reasonable fees for certifying land that does not produce a harvested crop. However, the department realized after publishing the proposed rule that some instances could arise in which the proposed fee structure would result in a higher fee for a farm with some land in crop production and some land not in crop production than they would pay if all of the land was categorized as "in crop production." This was not the intent of the proposed fee structure, so the new clause was added to provide a more equitable option. In §18.702(f)(2)(D)(ii), the words "less than" were deleted to clarify that the fee for 5 up to 50 acres is $100.

New Subchapter A defines terms used in the organic industry and in the regulations. Subchapter B establishes which businesses must be certified and which are exempt or excluded from certification, requirements to be met by certified, exempt and excluded operations, and general guidelines on allowed and prohibited substances. Subchapter C sets standards for organic production and handling operations. Subchapter D establishes organic labeling categories and requirements. Subchapter E outlines procedures and requirements for certification of organic production and handling operations. Subchapter F creates a list of substances allowed and prohibited in organic production, provides compliance and appeals procedures, addresses testing of agricultural products, outlines complaint procedures, establishes an Organic Certification Advisory Committee, implements a new fee structure, provides marketing logos for products certified by the department, outlines procedures for obtaining transaction certificates, establishes a registration program for organic businesses and certifying agents in Texas and provides for a Transitional certification program.

No comments were received regarding adoption of the repeal or the new sections.

4 TAC §§18.1 - 18.20

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

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

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SUBCHAPTER A. DEFINITIONS

4 TAC §18.1, §18.2

New §18.1 and §18.2 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

§18.2. Terms Defined.

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

(1) Administrator--The Administrator for the Agricultural Marketing Service, United States Department of Agriculture, or the representative to whom authority has been delegated to act in the stead of the Administrator.

(2) Agricultural inputs--All substances or materials used in the production or handling of organic agricultural products.

(3) Agricultural product--Any agricultural commodity or product, whether raw or processed, including any commodity or product derived from livestock, that is marketed in the United States for human or livestock consumption.

(4) Allowed synthetic--A substance that is included on the National List of synthetic substances allowed for use in organic production or handling.

(5) Animal drug--Any drug as defined in section 201 of the Federal Food, Drug, and Cosmetic Act, as amended (21 United States Code (U.S.C.), §321), that is intended for use in livestock, including any drug intended for use in livestock feed but not including such livestock feed.

(6) Annual seedling--A plant grown from seed that will complete its life cycle or produce a harvestable yield within the same crop year or season in which it was planted.

(7) Area of operation--The types of operations: crops, livestock, wild-crop harvesting or handling, or any combination thereof that a certifying agent may be accredited to certify under this chapter.

(8) Audit trail--Documentation that is sufficient to determine the source, transfer of ownership, and transportation of any agricultural product labeled as "100 percent organic," the organic ingredients of any agricultural product labeled as "organic" or "made with organic (specified ingredients)" or the organic ingredients of any agricultural product containing less than 70 percent organic ingredients identified as organic in an ingredients statement.

(9) Biodegradable--Subject to biological decomposition into simpler biochemical or chemical components.

(10) Biologics--All viruses, serums, toxins, and analogous products of natural or synthetic origin, such as diagnostics, antitoxins, vaccines, live microorganisms, killed microorganisms, and the antigenic or immunizing components of microorganisms intended for use in the diagnosis, treatment, or prevention of diseases of animals.

(11) Breeder stock--Female livestock whose offspring may be incorporated into an organic operation at the time of their birth.

(12) Buffer zone--An area located between a certified production operation or portion of a production operation and an adjacent land area that is not maintained under organic management. A buffer zone must be sufficient in size or other features (e.g., windbreaks or a diversion ditch) to prevent the possibility of unintended contact by prohibited substances applied to adjacent land areas with an area that is part of a certified operation.

(13) Bulk--The presentation to consumers at retail sale of an agricultural product in unpackaged, loose form, enabling the consumer to determine the individual pieces, amount, or volume of the product purchased.

(14) Certification or certified--A determination made by a certifying agent that a production or handling operation is in compliance with the Organic Foods Production Act of 1990 and the regulations in this chapter, which is documented by a certificate of organic operation.

(15) Certified operation--A crop or livestock production, wild- crop harvesting or handling operation, or portion of such operation that is certified by an accredited certifying agent as utilizing a system of organic production or handling as described by the Organic Foods Production Act of 1990 and the regulations in this chapter.

(16) Certifying agent--Any entity accredited by the USDA as a certifying agent for the purpose of certifying a production or handling operation as a certified production or handling operation.

(17) Certifying agent's operation--All sites, facilities, personnel, and records used by a certifying agent to conduct certification activities under the Organic Foods Production Act of 1990 and the regulations in this chapter.

(18) Claims--Oral, written, implied, or symbolic representations, statements, or advertising or other forms of communication presented to the public or buyers of agricultural products that relate to the organic certification process or the term, "100 percent organic," "organic," or "made with organic (specified ingredients or food group(s))," or, in the case of agricultural products containing less than 70 percent organic ingredients, the term, "organic," on the ingredients panel.

(19) Commercially available--The ability to obtain a production input in an appropriate form, quality, or quantity to fulfill an essential function in a system of organic production or handling, as determined by the certifying agent in the course of reviewing the organic plan.

(20) Commingling--Physical contact between unpackaged organically produced and nonorganically produced agricultural products during production, processing, transportation, storage or handling, other than during the manufacture of a multiingredient product containing both types of ingredients.

(21) Compost--The product of a managed process through which microorganisms break down plant and animal materials into more available forms suitable for application to the soil. Compost must be produced through a process that combines plant and animal materials with an initial C:N ratio of between 25:1 and 40:1. Producers using an in-vessel or static aerated pile system must maintain the composting materials at a temperature between 131 degrees Fahrenheit and 170 degrees Fahrenheit for 3 days. Producers using a windrow system must maintain the composting materials at a temperature between 131 degrees Fahrenheit and 170 degrees Fahrenheit for 15 days, during which time, the materials must be turned a minimum of five times.

(22) Control--Any method that reduces or limits damage by populations of pests, weeds, or diseases to levels that do not significantly reduce productivity.

(23) Crop--A plant or part of a plant intended to be marketed as an agricultural product or fed to livestock.

(24) Crop residues--The plant parts remaining in a field after the harvest of a crop, which include stalks, stems, leaves, roots, and weeds.

(25) Crop rotation--The practice of alternating the annual crops grown on a specific field in a planned pattern or sequence in successive crop years so that crops of the same species or family are not grown repeatedly without interruption on the same field. Perennial cropping systems employ means such as alley cropping, intercropping, and hedgerows to introduce biological diversity in lieu of crop rotation.

(26) Crop year--That normal growing season for a crop as determined by the U. S. Secretary of Agriculture.

(27) Cultivation--Digging up or cutting the soil to prepare a seed bed; control weeds; aerate the soil; or work organic matter, crop residues, or fertilizers into the soil.

(28) Cultural methods--Methods used to enhance crop health and prevent weed, pest, or disease problems without the use of substances; examples include the selection of appropriate varieties and planting sites; proper timing and density of plantings; irrigation; and extending a growing season by manipulating the microclimate with green houses, cold frames, or wind breaks.

(29) Department--The Texas Department of Agriculture.

(30) Detectable residue--The amount or presence of chemical residue or sample component that can be reliably observed or found in the sample matrix by current approved analytical methodology.

(31) Disease vectors--Plants or animals that harbor or transmit disease organisms or pathogens which may attack crops or livestock.

(32) Drift--The physical movement of prohibited substances from the intended target site onto an organic operation or portion thereof.

(33) Emergency pest or disease treatment program--A mandatory program authorized by a Federal, State, or local agency for the purpose of controlling or eradicating a pest or disease.

(34) EPA--The United States Environmental Protection Agency.

(35) Excluded methods--A variety of methods used to genetically modify organisms or influence their growth and development by means that are not possible under natural conditions or processes and are not considered compatible with organic production. Such methods include cell fusion, microencapsulation and macroencapsulation, and recombinant DNA technology (including gene deletion, gene doubling, introducing a foreign gene, and changing the positions of genes when achieved by recombinant DNA technology). Such methods do not include the use of traditional breeding, conjugation, fermentation, hybridization, in vitro fertilization, or tissue culture.

(36) FDA--The United States Food and Drug Administration

(37) Feed--Edible materials which are consumed by livestock for their nutritional value. Feed may be concentrates (grains) or roughages (hay, silage, fodder). The term, "feed," encompasses all agricultural commodities, including pasture ingested by livestock for nutritional purposes.

(38) Feed additive--A substance added to feed in micro quantities to fulfill a specific nutritional need; i.e., essential nutrients in the form of amino acids, vitamins, and minerals.

(39) Feed Supplement--A combination of feed nutrients added to livestock feed to improve the nutrient balance or performance of the total ration and intended to be:

(A) Diluted with other feeds when fed to livestock;

(B) Offered free choice with other parts of the ration if separately available; or

(C) Further diluted and mixed to produce a complete feed.

(40) Fertilizer--A single or blended substance containing one or more recognized plant nutrient(s) which is used primarily for its plant nutrient content and which is designed for use or claimed to have value in promoting plant growth.

(41) Field--An area of land identified as a discrete unit within a production operation.

(42) Forage--Vegetative material in a fresh, dried, or ensiled state (pasture, hay, or silage), which is fed to livestock.

(43) Handle--To sell, process, or package agricultural products, except such term shall not include the sale, transportation, or delivery of crops or livestock by the producer thereof to a handler.

(44) Handler--Any person engaged in the business of handling agricultural products, including producers who handle crops or livestock of their own production, except such term shall not include final retailers of agricultural products that do not process agricultural products.

(45) Handling operation--Any operation or portion of an operation (except final retailers of agricultural products that do not process agricultural products) that receives or otherwise acquires agricultural products and processes, packages, or stores such products.

(46) Inert ingredient--Any substance (or group of substances with similar chemical structures if designated by the Environmental Protection Agency) other than an active ingredient which is intentionally included in any pesticide product.

(47) Information panel--That part of the label of a packaged product that is immediately contiguous to and to the right of the principal display panel as observed by an individual facing the principal display panel, unless another section of the label is designated as the information panel because of package size or other package attributes (e.g., irregular shape with one usable surface).

(48) Ingredient--Any substance used in the preparation of an agricultural product that is still present in the final commercial product as consumed.

(49) Ingredients statement--The list of ingredients contained in a product shown in their common and usual names in the descending order of predominance.

(50) Inspector--Any person retained or used by a certifying agent to conduct inspections of certification applicants or certified production or handling operations.

(51) Inspection--The act of examining and evaluating the production or handling operation of an applicant for certification or certified operation to determine compliance with the Organic Foods Production Act of 1990 and the regulations in this chapter.

(52) Label--A display of written, printed, or graphic material on the immediate container of an agricultural product or any such material affixed to any agricultural product or affixed to a bulk container containing an agricultural product, except for package liners or a display of written, printed, or graphic material which contains only information about the weight of the product.

(53) Labeling--All written, printed, or graphic material accompanying an agricultural product at any time or written, printed, or graphic material about the agricultural product displayed at retail stores about the product.

(54) Livestock--Any cattle, sheep, goat, swine, poultry, or equine animals used for food or in the production of food, fiber, feed, or other agricultural-based consumer products; wild or domesticated game; or other nonplant life, except such term shall not include aquatic animals or bees for the production of food, fiber, feed, or other agricultural-based consumer products.

(55) Lot--Any number of containers which contain an agricultural product of the same kind located in the same conveyance, warehouse, or packing house and which are available for inspection at the same time.

(56) Manure--Feces, urine, other excrement, and bedding produced by livestock that has not been composted.

(57) Market information--Any written, printed, audiovisual, or graphic information, including advertising, pamphlets, flyers, catalogues, posters, and signs, distributed, broadcast, or made available outside of retail outlets that are used to assist in the sale or promotion of a product.

(58) Mulch--Any nonsynthetic material, such as wood chips, leaves, or straw, or any synthetic material included on the list of synthetic substances allowed for use in organic crop production for such use, such as newspaper or plastic that serves to suppress weed growth, moderate soil temperature, or conserve soil moisture.

(59) Narrow range oils--Petroleum derivatives, predominately of paraffinic and napthenic fractions with 50 percent boiling point (10 mm Hg) between 415 degrees Fahrenheit and 440 degrees Fahrenheit.

(60) National List--A list of allowed and prohibited substances as provided for in the Organic Foods Production Act of 1990 and established in §§205.601-205.606 of the National Organic Standards.

(61) Natural resources of the operation--The physical, hydrological, and biological features of a production operation, including soil, water, wetlands, woodlands, and wildlife.

(62) Nonagricultural substance--A substance that is not a product of agriculture, such as a mineral or a bacterial culture, that is used as an ingredient in an agricultural product. For the purposes of this part, a nonagricultural ingredient also includes any substance, such as gums, citric acid, or pectin, that is extracted from, isolated from, or a fraction of an agricultural product so that the identity of the agricultural product is unrecognizable in the extract, isolate, or fraction.

(63) Nonsynthetic (natural)--A substance that is derived from mineral, plant, or animal matter and does not undergo a synthetic process. For the purposes of this chapter, nonsynthetic is used as a synonym for natural as the term is used in the Organic Foods Production Act of 1990.

(64) Nontoxic--Not known to cause any adverse physiological effects in animals, plants, humans, or the environment.

(65) Nonretail container--Any container used for shipping or storage of an agricultural product that is not used in the retail display or sale of the product.

(66) Organic--A labeling term that refers to an agricultural product produced in accordance with the National Organic Program and the regulations in this chapter.

(67) Organic matter--The remains, residues, or waste products of any organism.

(68) Organic production--A production system that is managed in accordance with the National Organic Program and regulations in this chapter to respond to site-specific conditions by integrating cultural, biological, and mechanical practices that foster cycling of resources, promote ecological balance, and conserve biodiversity.

(69) Organic system plan--A plan of management of an organic production or handling operation that has been agreed to by the producer or handler and the certifying agent and that includes written plans concerning all aspects of agricultural production or handling described in the regulations in subchapter C of this chapter.

(70) Pasture--Land used for livestock grazing that is managed to provide feed value and maintain or improve soil, water, and vegetative resources.

(71) Person--An individual, partnership, corporation, association, cooperative, or other entity.

(72) Pesticide--Any substance which alone, in chemical combination, or in any formulation with one or more substances is defined as a pesticide in section 2(u) of the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136(u) et seq).

(73) Planting stock--Any plant or plant tissue other than annual seedlings but including rhizomes, shoots, leaf or stem cuttings, roots, or tubers, used in plant production or propagation.

(74) Practice standard--The guidelines and requirements through which a production or handling operation implements a required component of its production or handling organic system plan. A practice standard includes a series of allowed and prohibited actions, materials, and conditions to establish a minimum level performance for planning, conducting, and maintaining a function, such as livestock health care or facility pest management, essential to an organic operation.

(75) Principal display panel--That part of a label that is most likely to be displayed, presented, shown, or examined under customary conditions of display for sale.

(76) Processing--Cooking, baking, curing, heating, drying, mixing, grinding, churning, separating, extracting, slaughtering, cutting, fermenting, distilling, eviscerating, preserving, dehydrating, freezing, chilling, or otherwise manufacturing and includes the packaging, canning, jarring, or otherwise enclosing food in a container.

(77) Processing aid--

(A) substance that is added to a food during the processing of such food but is removed in some manner from the food before it is packaged in its finished form;

(B) a substance that is added to a food during processing, is converted into constituents normally present in the food, and does not significantly increase the amount of the constituents naturally found in the food; and

(C) a substance that is added to a food for its technical or functional effect in the processing but is present in the finished food at insignificant levels and does not have any technical or functional effect in that food.

(78) Producer--A person who engages in the business of growing or producing food, fiber, feed, and other agricultural-based consumer products.

(79) Production lot number/identifier--Identification of a product based on the production sequence of the product showing the date, time, and place of production used for quality control purposes.

(80) Prohibited substance--A substance the use of which in any aspect of organic production or handling is prohibited or not provided for in the regulations of this chapter.

(81) Records--Any information in written, visual, or electronic form that documents the activities undertaken by a producer, handler, or certifying agent to comply with the regulations in this chapter.

(82) Residue testing--An official or validated analytical procedure that detects, identifies, and measures the presence of chemical substances, their metabolites, or degradations products in or on raw or processed agricultural products.

(83) Responsibly connected--Any person who is a partner, officer, director, holder, manager, or owner of 10 percent or more of the voting stock of an applicant or a recipient of certification.

(84) Retail food establishment--A restaurant; delicatessen; bakery; grocery store; or any retail outlet with an in-store restaurant, delicatessen, bakery, salad bar, or other eat-in or carry-out service of processed or prepared raw and ready-to-eat- food.

(85) Routine use of parasiticide--The regular, planned, or periodic use of parasiticides.

(86) Sewage sludge--A solid, semisolid, or liquid residue generated during the treatment of domestic sewage in a treatment works. Sewage sludge includes but is not limited to: domestic septage; scum or solids removed in primary, secondary, or advanced wastewater treatment processes; and a material derived from sewage sludge. Sewage sludge does not include ash generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings generated during preliminary treatment of domestic sewage in a treatment works.

(87) Slaughter stock--Any animal that is intended to be slaughtered for consumption by humans or other animals.

(88) Split operation--An operation that produces or handles both organic and nonorganic agricultural products.

(89) Soil and water quality--Observable indicators of the physical, chemical, or biological condition of soil and water, including the presence of environmental contaminants.

(90) Synthetic--A substance that is formulated or manufactured by a chemical process or by a process that chemically changes a substance extracted from naturally occurring plant, animal, or mineral sources, except that such term shall not apply to substances created by naturally occurring biological processes.

(91) Tolerance--The maximum legal level of a pesticide chemical residue in or on a raw or processed agricultural commodity or processed food.

(92) Transplant--A seedling which has been removed from its original place of production, transported, and replanted.

(93) Unavoidable residual environmental contamination (UREC)--Background levels of naturally occurring or synthetic chemicals that are present in the soil or present in organically produced agricultural products that are below established tolerances.

(94) Wild crop--Any plant or portion of a plant that is collected or harvested from a site that is not maintained under cultivation or other agricultural management.

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

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SUBCHAPTER B. APPLICABILITY

4 TAC §§18.100 - 18.103, 18.105

New §§18.100-18.103, and 18.105 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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SUBCHAPTER C. ORGANIC PRODUCTION AND HANDLING REQUIREMENTS

4 TAC §§18.200 - 18.207, 18.236 - 18.239, 18.270 - 18.272, 18.290

New §§18.200-18.207, 18.236-18.239, 18.270-18.272 and 18.290 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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SUBCHAPTER D. LABELS, LABELING, AND MARKET INFORMATION

4 TAC §§18.300 - 18.310

New §§18.300-18.310 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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SUBCHAPTER E. CERTIFICATION

4 TAC §§18.400 - 18.406

New §§18.400-18.406 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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SUBCHAPTER F. ADMINISTRATIVE DIVISION 1. THE LIST OF ALLOWED AND PROHIBITED SUBSTANCES

4 TAC §§18.600 - 18.606

New §§18.600-18.606 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

§18.601. Synthetic Substances Allowed For Use in Organic Crop Production.

In accordance with restrictions specified in this section, the following synthetic substances may be used in organic crop production, provided that use of such substances do not contribute to contamination of crops, soil or water. Substances allowed by this section, except disinfectants and sanitizers in paragraph (1) and those substances in paragraphs (3), (10), (11) and (12) of this section, may only be used when the provisions set forth in §18.206(a) through (d) prove insufficient to prevent or control the target pest:

(1) As algicide, disinfectants, and sanitizer, including irrigation system cleaning systems:

(A) alcohols:

(i) ethanol;

(ii) isopropanol;

(B) chlorine materials, except that, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act:

(i) calcium hypochlorite;

(ii) chlorine dioxide;

(iii) sodium hypochlorite;

(C) copper sulfate, for use as an algicide in aquatic rice systems, is limited to one application per field during any 24- month period. Application rates are limited to those which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and the department;

(D) hydrogen peroxide;

(E) ozone gas, for use as an irrigation system cleaner only;

(F) peracetic acid, for use in disinfecting equipment, seed and asexually propagated planting material;

(G) soap-based algicide/demossers;

(2) as herbicides, weed barriers, as applicable:

(A) herbicides, soap-based - for use in farmstead maintenance (roadways, ditches, right of ways, building perimeters) and ornamental crops;

(B) mulches:

(i) newspaper or other recycled paper, without glossy or colored inks;

(ii) plastic mulch and covers (petroleum-based other than polyvinyl chloride (PVC));

(3) as compost feedstocks, newspapers or other recycled paper, without glossy or colored inks;

(4) as animal repellents: soaps, ammonium, for use as a large animal repellant only, no contact with soil or edible portion of crop;

(5) as insecticides (including acaricides or mite control):

(A) ammonium carbonate - for use as bait in insect traps only, no direct contact with crop or soil;

(B) boric acid - structural pest control, no direct contact with organic food or crops;

(C) copper sulfate, for use as tadpole shrimp control in aquatic rice production, is limited to one application per field during any 24-month period. Application rates are limited to levels which do not increase baseline soil test values for copper over a timeframe agreed upon by the producer and the department.

(D) elemental sulfur;

(E) lime sulfur - including calcium polysulfide;

(F) oils, horticultural - narrow range oils as dormant, suffocating, and summer oils;

(G) soaps, insecticidal;

(H) sticky traps/barriers;

(6) as insect management: pheromones;

(7) as rodenticides:

(A) sulfur dioxide, for underground rodent control only (smoke bombs);

(B) vitamin D3;

(8) as slug or snail bait : none;

(9) as plant disease control:

(A) coppers, fixed - copper hydroxide, copper oxide, copper oxychloride, includes products exempted from Environmental Protection Agency tolerance, provided that, copper-based materials

must be used in a manner that minimizes accumulation in the soil and shall not be used as herbicides;

(B) copper sulfate, substance must be used in a manner that minimizes accumulation of copper in the soil;

(C) hydrated lime;

(D) hydrogen peroxide;

(E) lime sulfur;

(F) oils, horticultural, narrow range oils as dormant, suffocating, and summer oils;

(G) peracetic acid, for use to control fire blight bacteria;

(H) potassium bicarbonate;

(I) elemental sulfur;

(J) streptomycin, for fire blight control in apples and pears only;

(K) tetracycline (oxytetracycline calcium complex), for fire blight control only;

(10) as plant or soil amendments:

(A) aquatic plant extracts (other than hydrolyzed), extraction process is limited to the use of potassium hydroxide or sodium hydroxide; solvent amount used is limited to that amount necessary for extraction;

(B) elemental sulfur:

(C) humic acids, naturally occurring deposits, water and alkali extracts only;

(D) lignin sulfonate, chelating agent, dust suppressant, floatation agent;

(E) magnesium sulfate, allowed with a documented soil deficiency;

(F) micronutrients - not to be used as a defoliant, herbicide, or desiccant. Those made from nitrates or chlorides are not allowed. Soil deficiency must be documented by testing:

(i) soluble boron products;

(ii) sulfates, carbonates, oxides, or silicates of zinc, copper, iron, manganese, molybdenum, selenium, and cobalt;

(G) Liquid fish products, can be pH adjusted with sulfuric, citric or phosphoric acid. The amount of acid used shall not exceed the minimum needed to lower the pH to 3.5;

(H) Vitamins, B1, C, and E;

(11) as plant growth regulators: ethylene gas for regulation of pineapple flowering;

(12) as floating agents in postharvest handling:

(A) lignin sulfonate;

(B) sodium silicate - for tree fruit and fiber processing;

(13) as synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances:

(A) EPA List 4 - Inerts of Minimal Concern.

(B) EPA List 3 - Inerts of Unknown Toxicity, for use only in passive pheromone dispensers.

§18.602. Nonsynthetic Substances Prohibited for Use in Organic Crop Production.

The following nonsynthetic substances may not be used in organic crop production:

(1) ash from manure burning;

(2) arsenic;

(3) calcium chloride, brine process is natural and prohibited for use except as a foliar spray to treat a physiological disorder associated with calcium uptake;

(4) lead salts;

(5) potassium chloride - unless derived from a mined source and applied in a manner that minimizes chloride accumulation in the soil;

(6) sodium fluoaluminate (mined);

(7) sodium nitrate, unless use is restricted to no more than 20 percent of the crop's total nitrogen requirement; use in spirulina production is unrestricted until October 21, 2005;

(8) strychnine;

(9) tobacco dust (nicotine sulfate);

§18.603. Synthetic Substances Allowed for Use in Organic Livestock Production.

In accordance with restrictions specified in this section the following synthetic substances may be used in organic livestock production:

(1) as disinfectants, sanitizer, and medical treatments as applicable:

(A) alcohols:

(i) ethanol, disinfectant and sanitizer only, prohibited as a feed additive;

(ii) isopropanol, disinfectant only;

(B) aspirin - approved for health care use to reduce inflammation;

(C) biologics: vaccines

(D) chlorohexidine, allowed for surgical procedures conducted by a veterinarian. Allowed for use as a teat dip when alternative germicidal agents and/or physical barriers have lost their effectiveness;

(E) chlorine materials - disinfecting and sanitizing facilities and equipment. Residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act:

(i) calcium hypochlorite;

(ii) chlorine dioxide;

(iii) sodium hypochlorite;

(F) electrolytes, without antibiotics;

(G) glucose;

(H) glycerin, allowed as a livestock teat dip, must be produced through the hydrolysis of fats or oils;

(I) hydrogen peroxide;

(J) iodine;

(K) magnesium sulfate;

(L) oxytocin, use in postparturition therapeutic applications;

(M) parasiticides: ivermectin, prohibited in slaughter stock, allowed in emergency treatment for dairy and breeder stock when organic system plan-approved preventive management does not prevent infestation. Milk or milk products from a treated animal cannot be labeled as provided for in subchapter D of this chapter for 90 days following treatment. In breeder stock, treatment cannot occur during the last third of gestation if the progeny will be sold as organic and must not be used during the lactation period of breeding stock;

(N) phosphoric acid - allowed as an equipment cleaner, provided that, no direct contact with organically managed livestock or land occurs;

(2) As topical treatment, external parasiticide or local anesthetic, as applicable:

(A) iodine;

(B) lidocaine, as a local anesthetic. Use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals;

(C) lime, hydrated, as external pest control, not permitted to cauterize physical alterations or deodorize animal wastes;

(D) mineral oil - for topical use and as a lubricant;

(E) procaine, as a local anesthetic, use requires a withdrawal period of 90 days after administering to livestock intended for slaughter and 7 days after administering to dairy animals;

(F) copper sulfate;

(3) as feed supplements, milk replacers, without antibiotics, as emergency use only, no nonmilk products or products from BST treated animals;

(4) as feed additives:

(A) DL-Methionine, DL-Methionine hydroxy analog, and DL- Methionine hydroxy analog calcium, for use only in organic poultry production until October 21, 2005;

(B) trace minerals, used for enrichment or fortification when Food and Drug Administration (FDA) approved;

(C) vitamins, used for enrichment or fortification when FDA approved;

(5) as synthetic inert ingredients as classified by the Environmental Protection Agency (EPA), for use with nonsynthetic substances or a synthetic substances listed in this section and used as an active pesticide ingredient in accordance with any limitations on the use of such substances. EPA List 4 - Inerts of Minimal Concern.

§18.605. Nonagricultural (Nonorganic) Substances Allowed as Ingredients in or on Processed Products Labeled as "Organic" or "Made with Organic (Specified Ingredients or Food Group(s))."

The following nonagricultural substances may be used as ingredients in or on processed products labeled as "organic" or "made with organic (specified ingredients or food group(s))" only in accordance with any restrictions specified in this section:

(1) nonsynthetics allowed:

(A) acids:

(i) alginic;

(ii) citric, produced by microbial fermentation of carbohydrate substances; and

(iii) lactic;

(B) agar-agar;

(C) animal enzymes:

(i) rennet, animal derived;

(ii) catalase, bovine liver;

(iii) animal lipase;

(iv) pancreatin;

(v) pepsin; and

(vi) trypsin;

(D) bentonite;

(E) calcium carbonate;

(F) calcium chloride;

(G) calcium sulfate, mined;

(H) carageenan;

(I) colors, nonsynthetic sources only;

(J) dairy cultures;

(K) diatomaceous earth - food filtering aid only;

(L) enzymes - must be derived from edible, nontoxic plants, nonpathogenic fungi, or nonpathogenic bacteria;

(M) flavors, nonsynthetic sources only and must not be produced using synthetic solvents and carrier systems or any artificial preservative;

(N) glucono delta-lactone, production by the oxidation of D- glucose with bromine water is prohibited;

(O) kaolin;

(P) magnesium sulfate, nonsynthetic sources only;

(Q) nitrogen ,oil-free grades;

(R) oxygen, oil-free grades;

(S) perlite, for use only as a filter aid in food processing;

(T) potassium chloride;

(U) potassium iodide;

(V) sodium bicarbonate;

(W) sodium carbonate;

(X) tartaric acid;

(Y) waxes - nonsynthetic:

(i) carnauba wax; and

(ii) wood resin;

(Z) yeast, nonsynthetic, growth on petrochemical substrate and sulfite waste liquor is prohibited:

(i) autolysate;

(ii) bakers;

(iii) brewers;

(iv) nutritional; and

(v) smoked, nonsynthetic smoke flavoring process must be documented;

(2) synthetics allowed:

(A) alginates;

(B) ammonium bicarbonate, for use only as a leavening agent;

(C) ammonium carbonate, for use only as a leavening agent;

(D) ascorbic acid;

(E) calcium citrate;

(F) calcium hydroxide;

(G) calcium phosphates (monobasic, dibasic, and tribasic);

(H) carbon dioxide;

(I) cellulose, for use in regenerative casings, as an anticaking agent (non-chlorine bleached) and filtering aid;

(J) chlorine materials - disinfecting and sanitizing food contact surfaces, Except, That, residual chlorine levels in the water shall not exceed the maximum residual disinfectant limit under the Safe Drinking Water Act;

(i) calcium hypochlorite;

(ii) chlorine dioxide;

(iii) sodium hypochlorite;

(K) ethylene, allowed for postharvest ripening of tropical fruit and degreening of citrus;

(L) ferrous sulfate, for iron enrichment or fortification of foods when required by regulation or recommended (independent organization);

(M) glycerides (mono and di), for use only in drum drying of food;

(N) glycerin, produced by hydrolysis of fats and oils;

(O) hydrogen peroxide;

(P) lecithin, bleached;

(Q) magnesium carbonate, for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic";

(R) magnesium chloride, derived from sea water;

(S) magnesium stearate, for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic";

(T) nutrient vitamins and minerals, in accordance with 21 CFR 104.20, Nutritional Quality Guidelines For Foods;

(U) ozone;

(V) pectin (low-methoxy);

(W) phosphoric acid - cleaning of food-contact surfaces and equipment only;

(X) potassium acid tartrate;

(Y) potassium tartrate made from tartaric acid;

(Z) potassium carbonate;

(AA) potassium citrate;

(BB) potassium hydroxide, prohibited for use in lye peeling of fruits and vegetables, except when used for peeling peaches during the Individually Quick Frozen (IQF) production process;

(CC) potassium iodide, for use only in agricultural products labeled "made with organic (specified ingredients or food group(s))," prohibited in agricultural products labeled "organic";

(DD) potassium phosphate, for use only in agricultural products labeled "made with organic (specific ingredients or food group(s))," prohibited in agricultural products labeled "organic";

(EE) silicon dioxide;

(FF) sodium citrate;

(GG) sodium hydroxide, prohibited for use in lye peeling of fruits and vegetables;

(HH) sodium phosphates, for use only in dairy foods;

(II) sulfur dioxide, for use only in wine labeled "made with organic grapes," provided that, total sulfite concentration does not exceed 100 ppm;

(JJ) tartaric acid;

(KK) tocopherols, derived from vegetable oil when rosemary extracts are not a suitable alternative;

(LL) xanthan gum.

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

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TRD-200308078
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: December 14, 2003
Proposal publication date: October 24, 2003
For further information, please call: (512) 463-4075

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DIVISION 2. COMPLIANCE

4 TAC §§18.660 - 18.662

New §§18.660-18.662 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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

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

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DIVISION 3. INSPECTION AND TESTING, REPORTING, AND EXCLUSION FROM SALE

4 TAC §§18.670 - 18.672

New §§18.670-18.672 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification; and §18.006, which authorizes the department to set and collect fees for organic certification.

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

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

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DIVISION 4. ADVERSE ACTION APPEAL PROCESS

4 TAC §18.680, §18.681

New §§18.680-18.681 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification.

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

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

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DIVISION 5. MISCELLANEOUS PROVISIONS

4 TAC §§18.700 - 18.706

New §§18.700-18.706 are adopted under the Texas Agriculture Code (the Code), §18.002, which provides the department with the authority to adopt rules necessary for the enforcement and administration of Chapter 18, Subchapter A, Organic Standards and Certification; and §18.006, which authorizes the department to set and collect fees for organic certification.

§18.702. Fees.

(a) An application fee and certification fee prescribed by the department shall be paid in conjunction with submission of a new application or an annual update of an existing certification.

(b) Scheduled date of annual update.

(1) For producers (land and livestock) and handlers (processors, distributors and retailers) the due date for the annual certification update shall be December 31 of each year.

(2) For handlers (processors, distributors and retailers) the due date for the annual certification update shall be August 31 of each year after December 31, 2003. To adjust to the new annual update due date, a prorated certification fee shall be charged for the time period from January 1, 2004 to August 31, 2004 for businesses changing to the August 31 due date.

(3) If the prescribed due date creates an undue hardship on a business due to the seasonal nature of the business operation, the alternate update due date may be requested in writing, provided that normal organic operations are available for inspection during the six months following the requested due date.

(c) The department may require additional fees or refund fees submitted by producers, processors, distributors, and retailers for underpayment or overpayment of prescribed annual fees or for a portion of a certification period.

(d) Additional fees may be charged for additions of fields or categories to be certified after initial application fees are submitted, or for additional inspections that are necessary to verify compliance with organic standards.

(e) Prorated fees may be charged for extension of an annual certification period which is prescribed by the department.

(f) Fees for certification or annual update of certification are based on the following schedules and shall become effective for applications and annual updates for the 2004 certification year:

(1) Application fee - all business types - $25; and

(2) Certification fee - based on business types. Fees are additive, with a minimum total fee of $150 for Producers.

(A) Producer (land). Fees for land in crop production at any time during the year (including actual production acres - harvested crops, hay and livestock feed grains) are as follows:

(i) less than one acre: $150;

(ii) one to less than five acres: $200;

(iii) five to less than 25 acres: $300;

(iv) 25 to less than 50 acres: $400;

(v) 50 to 100 acres: $500; and

(vi) greater than 100 acres: $500 + $50 for each additional increment or portion of 100 acres.

(B) Producer (land). Fees for land not in crop production for the entire year (including pasture, green manure crops, cover crops, fallow land and range land) are as follows:

(i) up to 100 acres: $50;

(ii) greater than 100 acres: $50 + $5 for each additional increment or portion of 100 acres.

(iii) if categorizing some fields as "not in crop production" results in a higher fee than if all of the certified land was categorized as "in crop production," the land that is not in crop production may be certified for the "in crop production" fee.

(C) Producer (land). Greenhouse/indoor production areas shall include actual production area and required buffer zones. Fees for greenhouse/indoor production are:

(i) less than 1,000 sq. ft.: $50;

(ii) 1,000 to 3,000 sq. ft.: $100; and

(iii) greater than 3,000 sq. ft.: $100 + $50 for each additional increment or portion of 3,000 sq. ft..

(D) Producer (livestock). Livestock production fees shall be based on the land area used to produce the livestock, with a separate fee required for each type of livestock production. Fees for livestock production are as follows:

(i) less than five acres: $60;

(ii) five to 50 acres: $100; and

(iii) greater than 50 acres: $200.

(E) Processors. Fees for certification or annual update of a certification for each processing facility are based on the following schedule (if more than one category applies, fees are additive.):

(i) certified producer with on-farm state licensed kitchen processing own certified food ingredients: $50;

(ii) certified producer with on-farm state licensed kitchen processing certified food ingredients other than his own: $50;

(iii) certified producer with on-farm processing of own certified feed: $50;

(iv) certified producer with on-farm processing of certified feed other than his own: $50;

(v) certified producer with on-farm storage or processing of own certified milk products: $50;

(vi) certified producer with on-farm storage or processing of certified milk products other than his own: $50;

(vii) cotton ginning: $300;

(viii) textile manufacturing: $600;

(ix) commercial food processor: $600; and

(x) commercial feed processor: $600.

(F) Distributors. Fees for certification or annual update of a certification for each distribution facility are based on the following schedule:

(i) broker/trader food products: $400;

(ii) broker/trader feed products: $400;

(iii) broker/trader fiber products: $400;

(iv) warehousing/storage of food products: $600;

(v) warehousing/storage of feed products: $600;

(vi) warehousing/storage/textile converter (cut and sew) of fiber products: $600;

(vii) packing/grading/sizing of food products: $400; and

(viii) packing/grading/sizing of feed products: $400.

(G) Retailers. The fee for certification or annual update for certification for each retail location is $100.

(3) Re-inspection fee: $100 per re-inspection.

(g) A portion of the certification fee may be refunded if the application is withdrawn prior to certification. Refunds will be prorated based on the steps of the certification process that have been completed.

(1) Application fee is non-refundable.

(2) If withdrawn prior to initial review, all of the certification fee may be refunded.

(3) If withdrawn after initial review but prior to inspection, 75 percent of the certification fee may be refunded.

(4) If withdrawn after inspection but prior to final review, 25 percent of the certification fee may be refunded.

(5) After final review, none of the certification fee shall be refunded.

(h) Registration Fees: Fees for application or renewal of registration are based on the following schedules:

(1) Organic businesses: $25;

(2) Organic certifying agents: $25;

(i) Transaction Certificate Fee: $50 per transaction certificate.

(j) Late Fees. A person who fails to submit an annual update or registration renewal application and prescribed fee on or before the due date of the certification update or registration renewal shall pay, in addition to the update or renewal fee, a late fee of:

(1) 50 percent of the fee if received by the department from at least one but less than 91 days after the due date;

(2) 100 percent if received by the department from at least 91 but less than 365 days after the due date.

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

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

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PART 3. TEXAS FEED AND FERTILIZER CONTROL SERVICE/OFFICE OF THE TEXAS STATE CHEMIST

CHAPTER 61. COMMERCIAL FEED RULES

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §61.1

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts amendments to TAC 4, Part 3, §61.1 concerning Definitions of the Commercial Feed Rules in paragraphs (3) and (4) ammoniated corn and cottonseed without changes to the proposed text as published in the September 26, 2003 issue of the *Texas Register* (28 TexReg 8226) and will not be republished. The amendment lowers the level of aflatoxin in contaminated corn and/or cottonseed which may be ammoniated from 1000 parts per billion (ppb) to 500 ppb and creates a definition for "Cottonseed, Feed Grade" in paragraph (10) with subsequent renumbering of the succeeding definitions. The date for the amended rule to be effective is January 1, 2004.

The changes are necessary in paragraphs (3) and (4) because the 1000 ppb level was not deemed sufficiently protective of the industry or consumer. The new paragraph (10) is necessary to prevent misbranding.

Groups or Associations providing comment for the rules: None.

Groups or Associations providing comment against the rules: Texas Cotton Ginners' Association.

Comments: Lowering the allowable level of aflatoxin in cottonseed from 1000 ppb to 500 ppb will not allow ginners to file claims on the gin level. The definition of cottonseed could subject whole cottonseed containing less than 20 ppb aflatoxin to the Commercial Feed Law.

The Office disagrees with both comments. Since no market has developed for either 500-1000 ppb corn or 500-1000 ppb cottonseed detoxified with ammonia, the change should benefit corn growers in their discussion with insurers with no practical impact on cotton ginners. If at some time in the future TDA approves the feeding of ammoniated cottonseed to dairies, changes could be made to the rules.

The definition for *Cottonseed, Feed Grade* does not place nor is intended to place those selling cottonseed containing less than 20 ppb aflatoxin under the Feed Law. Nor does the Office's proposal require that any cottonseed, regardless of aflatoxin level, be labeled as "feed grade." If cottonseed above 20 ppb aflatoxin were labeled "feed grade," it would, however, have to conform to the definition since it is adulterated under §141.148(2) and (6) of the Law.

These amendments are adopted under Texas Agriculture Code 141, §141.004 which provides Texas Feed and Fertilizer Control Service authority following notice and a public hearing to adopt rules as necessary for the enforcement of this Chapter including rules defining and establishing minimum standards for commercial feeds.

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307949

Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: January 1, 2004

Proposal publication date: September 26, 2003

For further information, please call: (979) 845-1121

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SUBCHAPTER G. INSPECTION, SAMPLING, AND ANALYSIS

4 TAC §61.41

The Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist adopts an amendment to TAC 4, Part 3, §61.41(a) concerning reference to the 16th Edition of the Official Methods of Analysis of AOAC International without changes to the proposed text as published in the September 26, 2003 issue of the *Texas Register* (28 TexReg 8227) and will not be republished. The effective date for the amendment to the rule is January 1, 2004.

The purpose of the amendment is to allow the Service to use new and improved methods in the enforcement of the Law.

There were no comments received in regards to the amendment.

The amendment is adopted under Texas Agriculture Code 141, §141.004 which provides Texas Feed and Fertilizer Control Service authority following notice and a public hearing to adopt rules as necessary for the enforcement of this Chapter including rules defining and establishing minimum standards for commercial feeds.

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

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Dr. George W. Latimer, Jr.

State Chemist

Texas Feed and Fertilizer Control Service/Office of the Texas State Chemist

Effective date: January 1, 2004

Proposal publication date: September 26, 2003

For further information, please call: (979) 845-1121

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 33. LICENSING

SUBCHAPTER A. APPLICATION PROCEDURES

16 TAC §33.1

The Texas Alcoholic Beverage Commission adopts amendments to §33.1 without changes to the text as originally published in the September 19, 2003, edition of the *Texas Register* (28 TexReg 8106).

This rule implements and applies §§11.46, 25.06, 61.42, 69.06, and 109.532 of the Texas Alcoholic Beverage Code. Prior to September 1, 2003, those statutory provisions authorized the denial of licenses or permits if the applicant had been convicted of or received deferred adjudication for certain criminal offenses during the previous three years or, in some instances, two years. Effective September 1, 2003, these statutes were amended to allow denial of an application for a license or permit if an applicant has been convicted of, or granted deferred adjudication for certain criminal offenses within the preceding five-year period. This amendment was adopted to conform the rule to these statutory changes.

There were no comments received concerning this amendment.

This amendment is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Sections 11.46, 25.06, 61.42, 61.43, 69.06, and 109.532 of the Alcoholic Beverage Code are affected by this rule.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308048
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3204

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16 TAC §33.6

The Alcoholic Beverage Code adopts amendments to §33.6 without changes to the text as originally published in the September 19, 2003, edition of the *Texas Register*, (28 TexReg 8107).

This rule governs procedures relating to applications for license and permits renewals. Section 6.04 of the Alcoholic Beverage Code previously provided that such applications may be filed within ten days of the expiration of the license or permit. This statute was amended to allow filing for renewal within thirty days of the expiration of a license or permit. This amendment conforms the rule to the revised statute.

There were no comments received regarding this amendment.

This amendment is adopted under §5.31 of the Alcoholic Beverage Code, which gives the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Section 6.04 of the Alcoholic Beverage Code is affected by this amendment.

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

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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For further information, please call: (512) 206-3204

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16 TAC §33.11

The Alcoholic Beverage Commission adopts amendments to §33.11 with changes to the text as originally published in the September 19, 2003, edition of the *Texas Register*, (28 TexReg 8108).

The rule governs the application and issuance of temporary licenses and temporary Wine and Beer Retailer's permits. After September 1, 2003, it became lawful to issue a temporary Wine and Beer Retailer's permit for use outside the county of the applicant's primary place of business. The adopted amendments establish procedures for applying for such permits and for reporting activity conducted under the authority of that permit to the commission.

At adoption, the phrase "that sells wine, beer or malt liquor under the temporary license/permit in a county other than the county in which the basic license/permit is located" was added to the text of §33.11(d). This addition was made to insure that the unique reporting requirements needed for permittees operating in two counties are not applied to all permittees.

No comments were received regarding this amendment.

This amendment is adopted under §5.31 of the Alcoholic Beverage Code, which grants the commission the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Chapter 27, Subchapter A of the Alcoholic Beverage Code is affected by this amendment.

§33.11. Application and Issuance.

(a) This rule relates to Chapter 27, Subchapter A of the Alcoholic Beverage Code.

(b) The following procedure is hereby established in the processing and issuing of temporary licenses and temporary wine and beer retail permits. Temporary licenses and permits shall be issued by a commission representative upon application by the holder of a primary license or permit authorizing issuance of same. Said application shall be made in duplicate upon forms furnished by the commission and shall be signed and sworn to by the applicant. The application shall

be accompanied by a cashier's check or a U.S. postal money order payable to the Texas Alcoholic Beverage Commission in the appropriate amount. The application shall be filed in the field office designated for the county where the temporary event is to be held.

(c) Upon approval of the application, the license or permit shall be issued on pre-numbered forms in triplicate. The original of the license shall be delivered to the applicant and must be displayed at all times in a conspicuous place on the licensed premises. The first copy of the license or permit shall be attached to the copy of the application and forwarded to the main office of the commission accompanied by the cashier's check or U.S. postal money order. The third copy shall remain in the book of pre-numbered forms and kept on file in the field office in which it is issued.

(d) Ten days following the temporary event, the temporary license/permit holder that sells wine, beer, or malt liquor under the temporary license/permit in a county other than the county in which the basic license/permit is located, shall file with the same office the amount of alcoholic beverages purchased and sold. Such list shall also indicate the serial number shown on the face of the temporary license/permit and date of the event. This list shall be kept on file by the field office.

(e) Any product being transported shall be accompanied by invoices. Remaining product must be returned to the primary licensed location.

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

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Alan Steen
Administrator
Texas Alcoholic Beverage Commission
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CHAPTER 41. AUDITING
SUBCHAPTER C. RECORDS AND REPORTS BY LICENSEES AND PERMITTEES

16 TAC §41.49

The Alcoholic Beverage Commission adopts amendments to §41.49 with changes to the text as originally published in the September 19, 2003, edition of the *Texas Register*, (28 TexReg 8108).

This rule governs the issuance of temporary membership cards for use by private clubs. Previously, the Alcoholic Beverage Code required a fee of $2.00 for issuance of such cards. This amount has been changed by statutory amendment and the rule is changed to conform with the statute. The words "corporate check," were added to the text of §41.49(d)(1) to allow for payment by permittees in this way.

No comments were received regarding this amendment.

This amendment is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Section 32.09 of the Alcoholic Beverage Code is affected by this amendment.

§41.49. Private Clubs-Temporary Memberships.

(a) This rule relates to §32.09 of the Alcoholic Beverage Code.

(b) Temporary membership card.

(1) A holder of a private club registration permit shall issue a temporary membership card to any person who intends to be served alcoholic beverages on its licensed premises, except a person who is a member of the club, or a guest of a member of the club, or, if the club is located in a hotel, a patron of the hotel who is at the hotel for overnight lodging and is a guest of the hotel manager who is a member of the club.

(2) The word "guest" shall mean an individual who is personally known by the member or one of the member's family and who is admitted to the club premises by personal introduction of, or in the physical company of, the member or one of the member's family.

(3) A holder of a private club registration permit shall prepare a record with entries made in chronological order showing the following about temporary membership cards issued: the date issued, the name of the person to whom the card was issued, and the serial number of the temporary membership card.

(c) A holder of a private club registration permit shall not serve an alcoholic beverage to a person who holds a temporary membership card, unless the temporary card is as follows:

(1) Issued by the commission to the club.

(2) Issued by the manager of the club, or other person in charge of the premises of the club, to the temporary member.

(3) The blanks, except signature blanks, on the temporary membership card have been properly filled by use of a typewriter or by printing in ink.

(4) Signed at the time of issuance by the manager of the club or other person in charge of the licensed premises.

(5) In possession of the temporary member to whom issued.

(d) Remittance.

(1) A temporary membership card shall not be issued to a club by the commission until the commission has received advance remittance of the effective fee established in the Texas Alcoholic Beverage Code. Such remittance shall be made only by cashier's check, certified check, corporate check, or United States postal money order payable to the Texas Alcoholic Beverage Commission.

(2) Temporary membership cards shall be issued by the commission upon written request of a club on forms provided by the commission together with the proper remittance.

(3) The commission shall issue temporary membership cards to any holder of a private club registration permit only in quantities of at least 50 cards at one time. If larger quantities are requested, the same shall be issued only in multiples of 50; provided, however, that the administrator is hereby empowered to authorize different multiples if necessary to conform with changes in the method of production of temporary membership cards.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308056
Alan Steen
Administrator
Texas Alcoholic Beverage Commission
Effective date: December 14, 2003
Proposal publication date: September 19, 2003
For further information, please call: (512) 206-3204

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16 TAC §41.55

The Alcoholic Beverage Commission adopts a new rule §41.55 with changes to the text as originally published in the September 19, 2003, edition of the *Texas Register*, (28 TexReg 8109).

Effective September 1, 2003, it became lawful for Texas wholesalers and distributors to possess and store malt beverages intended for export that are illegal for sale in Texas. This rule is adopted to require segregation and separate reporting of such product to insure the commission's ability to monitor product that is illegal for sale in Texas so as to insure that it is not placed into Texas commerce.

The word "separately" was placed into the text of §41.55(f) to insure that reports of products that are unlawful for sale in Texas are not mingled with reports of products intended for sale in Texas.

No comments were received regarding this rule.

This rule is adopted under the authority of §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the code.

Cross Reference: Sections 19.05, 20.03, 21.03, 64.09, 65.08, and 66.11 of the Alcoholic Beverage Code are affected by this new rule.

§41.55. Malt Beverages for Export.

(a) This rule applies to §§19.05, 20.03, 21.03, 64.09, 65.08 and 66.11 of the Alcoholic Beverage Code.

(b) Each holder of a general distributor's license, branch distributor's license, local distributor's license, wholesaler's permit, general class B wholesaler's permit, and local class B wholesaler's permit with the intent to receive, store, transport, and deliver malt beverages, that are otherwise illegal to sell in this state because of alcohol content, container size, package or label, for export to another state, shall register with the commission prior to any transactions taking place.

(c) The registration shall be on forms as prescribed by the administrator and shall include an assignment of territory for the distribution and sale of the malt beverages from the manufacturer of the brands(s).

(d) A separate invoice, from malt beverages approved in Texas, is required for each transaction covering malt beverages purchased or sold as described in this section.

(e) Malt beverages for export that are otherwise illegal to sell in this state because of alcohol content, containers, packages or labels, shall be stored and segregated from other licensed products.

(f) Each transaction relating to malt beverages for export shall be reported separately on the monthly Distributors Report or Wholesalers Ale & Malt Liquor Report.

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

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CHAPTER 45. MARKETING PRACTICES
SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.100

The Alcoholic Beverage Commission adopts the repeal to §45.100 relating to advertising and promotion of alcoholic beverages in public entertainment facilities. This repeal is adopted because of the passage of Senate Bill 1380 during the 78th Legislative session. Section 3(a)(1) of that bill supersedes this rule.

No comments were received relating to this repeal.

This repeal is enacted pursuant to §5.31 of the Alcoholic Beverage Code, which authorizes the commission to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: There are no provisions of the Alcoholic Beverage Code affected by this repeal.

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

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Alan Steen
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TITLE 19. EDUCATION
PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE PERMANENT SCHOOL FUND

19 TAC §33.5

The State Board of Education (SBOE) adopts an amendment to §33.5, concerning the code of ethics policy for managing and investing the Texas Permanent School Fund (PSF), with changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8484). The section establishes procedures and requirements for a code of ethics policy relating to the Texas PSF. The adopted amendment reflects revisions relating to ethics requirements for outside financial advisors or service providers in response to Senate Bill (SB) 1059, 78th Texas Legislature, 2003.

The adopted amendment consists of the addition of new subsection (s) that defines "statutory financial advisor or service provider" and describes the new annual statutory statement that must be filed by such individuals or entities.

In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2004, as necessary to comply with SB 1059 that requires the rule take effect not later than January 1, 2004.

In accordance with Texas Education Code (TEC), §43.0031(c), the SBOE submitted a copy of the proposed amendment to 19 TAC §33.5 to the Texas Ethics Commission and the state auditor for review and comment. The SBOE considered comments from the commission and the state auditor prior to final adoption.

In response to comments, the following change was made to the section since published as proposed.

Subsection (s)(2) was modified to incorporate language to further define a "statutory financial advisor or service provider" as an individual or business entity who provides financial services *or advice* to the Texas Education Agency (TEA) or the SBOE or an SBOE Member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly, or indirectly, more than *$5,000* in compensation from the TEA or the SBOE during a fiscal year.

The following comments were received regarding adoption of the new section.

Comment. The State Auditor's Office commented that the proposed rule was not as expansive as required by statute and suggested that it did not cover as many people as required under Texas Government Code, Chapter 2263.

Agency response. The agency agrees and the SBOE approved modified language to further define a "statutory financial advisor or service provider" as an individual or business entity who provides financial services *or advice* to the Texas Education Agency (TEA) or the SBOE or an SBOE Member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than *$5,000* in compensation from the TEA or the SBOE during a fiscal year.

Comment. The State Auditor's Office commented that the proposed rule failed to establish ethics rules for brokers.

Agency response. The agency disagrees and believes that current SBOE rules meet the new requirements of Texas Government Code, Chapter 2263. If the SBOE contracted with a broker, the broker would be a PSF Service Provider. Texas Government Code, §2263.004, requires that the SBOE by rule establish standards of conduct for these brokers. It does not require that these standards be labeled "ethics rules." Standards of conduct for brokers are currently established in 19 TAC §33.40(c).

Comment. The State Auditor's Office commented that the proposed rule needed to be more specific about reporting, noting that the uniform annual disclosure form developed by the state auditor should be customized or that the SBOE consider providing explanatory rules to reflect the PSF's circumstances.

Agency response. The agency agrees. The uniform disclosure form will be used and staff will monitor its use and advise the SBOE if practice indicates that changes would be useful.

Comment. The State Auditor's Office commented that the proposed rule did not clearly define covered entities, noting that the rule appears to not apply to members of the Investment Advisory Committee. They also commented that it is unclear as to whether "brokers" include those hired by the PSF's external investment managers or whether the term applies only to brokers directly hired by TEA staff.

Agency response. The agency agrees with adding further clarification. The SBOE approved modified language to further define a "statutory financial advisor or service provider" as an individual or business entity who provides financial services or advice to the TEA or the SBOE or an SBOE Member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than $5,000 in compensation from the TEA or the SBOE during a fiscal year. The agency disagrees, however, that brokers engaged by external investment managers to provide financial services to external investment managers are covered by the definitions in Texas Government Code, Chapter 2263. The agency also disagrees that Investment Advisory Committee members are covered by the statute or the rule as adopted unless they receive more than $5,000 in compensation.

Comment. The State Auditor's Office contended that the SBOE did not consider previous comments by the State Auditor's Office, the Texas Ethics Commission, and Cortex (author of a recent fiduciary review of the PSF.)

Agency response. The agency disagrees. The SBOE did consider these comments under an agenda item during the September 2003 meeting. The decision was made not to propose new rule action in response to the comments.

Comment. The Texas Ethics Commission expressed their belief that the rule as proposed, by requiring reporting, may serve to identify interests that could reasonably be expected to impair a person's independence of judgment and will assist in promoting public confidence and trust in government.

Agency response. The agency agrees with the comment.

The amendment is adopted under the Texas Education Code, §§43.0031 - 43.0034, which authorizes the State Board of Education to adopt and enforce an ethics policy that provides standards of conduct relating to the management and investment of the Permanent School Fund, and Texas Government Code, §2263.004, as added by SB 1059, 78th Texas Legislature, 2003,

which authorizes the governing body of a state governmental entity to by rule adopt standards of conduct applicable to financial advisors or service providers.

The amendment implements the Texas Education Code, §§43.0031 - 43.0034, and Texas Government Code, §2263.004.

§33.5. Code of Ethics.

(a) Fiduciary responsibility. The members of the State Board of Education (SBOE) serve as fiduciaries of the Texas Permanent School Fund (PSF) and are responsible for prudently investing its assets. The SBOE members or anyone acting on their behalf shall comply with the provisions of this section, the Texas Constitution, Texas statutes, and all other applicable provisions governing the responsibilities of a fiduciary.

(b) Compliance with constitution and code of ethics. The SBOE members are public officials governed by the provisions of the Texas Government Ethics Act, as stated in the Texas Government Code, Chapter 572.

(c) Definitions. For purposes of this section, the following terms shall have the following meanings.

(1) SBOE Member--A member of the SBOE; a spouse of an SBOE member; a child or children of an SBOE member.

(2) Persons Providing PSF Investment and Management Services to the SBOE (PSF Service Providers) are the following individuals:

(A) any person responsible by contract for managing the PSF, investing the PSF, executing brokerage transactions, or acting as a custodian of the PSF;

(B) a member of the Investment Advisory Committee;

(C) any person who provides consultant services for compensation regarding the management and investment of the PSF;

(D) any person who provides investment and management advice to an SBOE Member, with or without compensation, if an SBOE Member:

(i) gives the person access to records or information that are identified as confidential; or

(ii) asks the person to interview, meet with, or otherwise confer with current or potential consultants, advisors, money managers, investment custodians, Texas Education Agency (TEA) staff, or others who currently provide, or are likely to provide, services to the SBOE relating to the management or investment of the PSF; or

(E) any member of the TEA PSF staff or legal staff who is responsible for managing the PSF, investing the PSF, executing brokerage transactions, acts as a custodian of the PSF, or provides investment or management advice or legal advice regarding the investment or management of the PSF to an SBOE Member or PSF staff.

(d) Assets affected by this section. The provisions of this section apply to all PSF assets, both publicly and nonpublicly traded investments.

(e) General ethical standards.

(1) SBOE Members and PSF Service Providers must comply with all applicable laws, specifically, the following statutes: Texas Government Code, §825.211 (Certain Interests in Loans, Investments, or Contracts Prohibited), §572.051 (Standards of Conduct for Public Servants), §552.352 (Distribution of Confidential Information), §572.058 (Private Interest in Measure or Decision; Disclosure; Removal from Office for Violation), §572.054 (Representation by Former Officer or Employee of Regulatory Agency Restricted), §572.002 (General Definitions), §572.004 (Definition: Regulation), and Chapter 305 (Registration of Lobbyists); and Texas Penal Code, Chapter 36 (Bribery, Corrupt Influence, and Gifts to Public Servants) and Chapter 39 (Abuse of Office, Official Misconduct). The omission of any applicable statute listed in this paragraph does not excuse violation of its provisions.

(2) SBOE Members and PSF Service Providers must be honest in the exercise of their duties and must not take actions that will discredit the PSF.

(3) SBOE Members and PSF Service Providers shall be loyal to the interests of the PSF to the extent that such loyalty is not in conflict with other duties, which legally have priority. SBOE Members and PSF Service Providers shall avoid personal, employment, or business relationships that create conflicts of interest. Should SBOE Members or PSF Service Providers become aware of any conflict of interest, they have an affirmative duty to disclose and to cure the conflict in a manner provided for under this section.

(4) SBOE Members and PSF Service Providers shall not use nonpublic information gained through their relationship with the PSF to seek or obtain personal gain beyond agreed compensation and/or any properly authorized expense reimbursement. This should not be interpreted to forbid the use of PSF as a reference or the communication to others of the fact that a relationship with PSF exists, provided that no misrepresentation is involved.

(5) An SBOE Member shall report in writing the name and address of any PSF Service Provider, as defined by subsection (c)(2)(D) of this section, who provides investment and management advice to that SBOE Member. The SBOE Member shall submit the report to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider first providing investment and management advice to that SBOE Member.

(6) SBOE Members and PSF Service Providers shall report in writing any action described by the Texas Education Code, §7.108, to the commissioner of education for distribution to the SBOE within seven days of discovering the violation.

(7) A PSF Service Provider shall not make any gift or donation to a school or other charitable interest on behalf of, at the request of, or in coordination with an SBOE Member. Any PSF Service Provider or SBOE Member shall disclose in writing to the commissioner of education any information regarding such a donation.

(8) A PSF Service Provider shall disclose in writing to the commissioner of education for dissemination to all SBOE Members any business or financial transaction greater than $50 in value with an SBOE Member within 30 days of the transaction. Excluded from this subsection are checking accounts, savings accounts, credit cards, brokerage accounts, mutual funds, or other financial accounts that are provided to the SBOE Member under the same terms and conditions as they are provided to members of the general public.

(f) Disclosure.

(1) If an SBOE Member has a personal, private, direct, or indirect financial interest in a matter before the SBOE or if an SBOE Member solicited a specific investment action by the PSF staff or a PSF Service Provider, the SBOE Member shall publicly disclose the fact to the SBOE in a public meeting and shall not participate in a discussion or vote on a matter in which the SBOE Member has such interest. The disclosure shall be entered into the minutes of the meeting. For purposes of this section, a matter is a prospective directive to the PSF staff or a PSF Service Provider to undertake a specific investment or divestiture of securities for the PSF. This term does not include ratification of

prior securities transactions performed by the PSF staff or a PSF Service Provider and does not include an action to allocate classes of assets within the PSF.

(2) In addition, an SBOE Member shall fully disclose any substantial interest in any publicly or nonpublicly traded PSF investment (business entity) on the SBOE Member's annual financial report filed with the Texas Ethics Commission pursuant to Texas Government Code, §572.021. An SBOE Member has a substantial interest if the SBOE Member:

(A) has a controlling interest in the business entity;

(B) owns more than 10% of the voting interest in the business entity;

(C) owns more than $25,000 of the fair market value of the business entity;

(D) has a direct or indirect participating interest by shares, stock, or otherwise, regardless of whether voting rights are included, in more than 10% of the profits, proceeds, or capital gains of the business entity;

(E) is a member of the board of directors or other governing board of the business entity;

(F) serves as an elected officer of the business entity; or

(G) is an employee of the business entity.

(g) Conflicts of interest.

(1) A conflict of interest exists whenever SBOE Members or PSF Service Providers have personal or private commercial or business relationships that could reasonably be expected to diminish their independence of judgment in the performance of their duties. For example, a person's independence of judgment is diminished when the person is in a position to take action or not take action with respect to PSF and such act or failure to act is, may be, or reasonably appears to be influenced by considerations of personal gain or benefit rather than motivated by the interests of PSF. Conflicts include, but are not limited to, beneficial interests in securities, corporate directorships, trustee positions, or other special relationships that could reasonably be considered a conflict of interest with the duties to the PSF.

(2) An SBOE Member shall fully disclose in any meeting that considers an issue about which the member has a conflict of interest and shall not participate in a discussion or vote on a matter in which the SBOE Member has direct or indirect financial interest.

(3) Any SBOE Member or PSF Service Provider who has a conflict of interest shall disclose the conflict to the commissioner of education and the chair and vice chair of the SBOE on the disclosure form. The disclosure form is provided in this subsection entitled "Potential Conflict of Interest Disclosure Form."
Figure: 19 TAC §33.5(g)(3) (No change.)

(4) A person who files a statement under paragraph (3) of this subsection disclosing a possible conflict of interest may not give advice or make decisions about a matter affected by the possible conflict of interest unless the SBOE, after consultation with the general counsel of the TEA, expressly waives this prohibition. The SBOE may delegate the authority to waive this prohibition.

(h) Prohibited transactions and interests. For purposes of this section, the term "direct placement" (with respect to investments that are not publicly traded) is defined as a direct sale of securities, generally to institutional investors, with or without the use of brokers or underwriters.

(1) No SBOE Member or PSF Service Provider shall:

(A) have a financial interest in a direct placement investment of the PSF;

(B) serve as an officer, director, or employee of an entity in which a direct placement investment is made by the PSF; or

(C) serve as a consultant to, or receive any fee, commission or payment from, an entity in which a direct placement investment is made by the PSF.

(2) No SBOE Member or PSF Service Provider shall:

(A) act as a representative or agent of a third party in dealing with a PSF manager or consultant; or

(B) be employed for two years after the end of his or her term on the SBOE with an organization in which the PSF invested, unless the organization's stock or other evidence of ownership is traded on the public stock or bond exchanges.

(i) Solicitation of support. No SBOE Member shall solicit support on behalf of any political candidate from a PSF Service Provider or any PSF manager, consultant, or staff member. The manager, PSF Service Provider, consultant, or staff member shall report any such incident in writing to the commissioner of education for distribution to the SBOE.

(j) Hiring external professionals. The SBOE may contract with private professional investment managers to help make PSF investments. The SBOE has the authority and responsibility to hire other external professionals, including custodians or consultants. The SBOE shall select each professional based solely on merit and subject to the provisions of §33.55 of this title (relating to Standards for Selecting Consultants, Investment Managers, Custodians, and Other Professionals To Provide Outside Expertise for the Fund).

(k) Responsibilities of PSF Service Providers. The PSF Service Providers shall be notified in writing of the code of ethics contained in this section. Any existing contracts for investment and any future investment shall strictly conform to this code of ethics. The PSF Service Provider shall report in writing any suggestion or offer by an SBOE Member to deviate from the provisions of this section to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. The PSF Service Provider shall report in writing any violation of this code of ethics committed by another PSF Service Provider to the commissioner of education for distribution to the SBOE within 30 days of the PSF Service Provider discovering the violation. A PSF Service Provider or other person retained in a fiduciary capacity must comply with the provisions of this section.

(l) Gifts and entertainment.

(1) Bribery. SBOE Members are prohibited from soliciting, offering, or accepting gifts, payments, and other items of value in exchange for an official act, including a vote, recommendation, or any other exercise of official discretion (Texas Penal Code, §36.02).

(2) Acceptance of gifts.

(A) An SBOE Member may not accept gifts, favors, services, or benefits that may reasonably tend to influence the SBOE Member's official conduct or that the SBOE Member knows or should know are intended to influence the SBOE Member's official conduct. For purposes of this paragraph, a gift does not include an item with a value of less than $50, excluding cash or negotiable instruments.

(B) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows is interested or is likely to become interested in a charter, contract, purchase,

payment, claim, or other pecuniary transaction over which the SBOE has discretion.

(C) An SBOE Member may not accept a gift, favor, service, or benefit from a person that the SBOE Member knows to be subject to the regulation, inspection, or investigation of the SBOE or the TEA.

(D) An SBOE Member may not solicit, accept, or agree to accept a benefit from a person with whom civil or criminal litigation is pending or contemplated by the SBOE or the TEA.

(E) So long as the gift or benefit is not given by a person subject to the SBOE's or the TEA's regulation, inspection, or investigation, an SBOE Member may accept a gift, payment, or contribution from an individual who is not registered as a lobbyist with the Texas Ethics Commission if it fits into one of the following categories:

(i) items worth less than $50 (may not be cash, checks, or negotiable instruments);

(ii) independent relationship, such as kinship, or a personal, professional, or business relationship independent of the SBOE Member's official capacity;

(iii) fees for services rendered outside the SBOE Member's official capacity;

(iv) government property issued by a governmental entity that allows the use of the property; or

(v) food, lodging, entertainment, and transportation, if accepted as a guest and the donor is present.

(F) The following provisions govern the disposition of an individual who is a PSF Service Provider or who is both a lobbyist registered with the Texas Ethics Commission and who represents a person subject to the SBOE's or the TEA's regulation, inspection, or investigation.

(i) An SBOE Member may not accept:

(I) loans, cash, or negotiable instruments;

(II) travel or lodging for a pleasure trip;

(III) travel and lodging in connection with a fact-finding trip or to a seminar or conference at which the SBOE Member does not provide services;

(IV) entertainment worth more than $50 in a calendar year;

(V) gifts, other than awards and mementos, that combined are worth more than $50 in value for a calendar year. Gifts do not include food, entertainment, lodging, and transportation; or

(VI) individual awards and mementos worth more than $50 each.

(ii) An SBOE Member may accept food and beverages if the PSF Service Provider or lobbyist is present.

(G) An SBOE Member may not solicit, agree to accept, or accept an honorarium in consideration for services that the SBOE Member would not have been asked to provide but for the SBOE Member's official position. An SBOE Member may accept food, transportation, and lodging in connection with a speech performed as a result of the SBOE Member's position. An SBOE Member must report the food, lodging, or transportation accepted under this subparagraph in the SBOE Member's annual personal financial statement.

(H) Under no circumstances shall an SBOE Member accept a prohibited gift if the source of the gift is not identified or if the SBOE Member knows or has reason to know that the gift is being offered through an intermediary.

(I) If an unsolicited prohibited gift is received by an SBOE Member, he or she should return the gift to its source. If that is not possible or feasible, the gift should be donated to charity. The SBOE Member shall report the return of the gift or the donation of the gift to the commissioner of education.

(J) A PSF Service Provider shall file a report annually on January 15 of each year on the expenditure report provided in this subsection entitled "Report of Expenditures of Persons Providing Services to the State Board of Education Relating to the Management and Investment of the Permanent School Fund." The report shall be for the time period beginning on December 1 of the previous year and ending on November 30 of the current year. The expenditure report must describe in detail any expenditure of more than $50 made by the person on behalf of:

(i) an SBOE Member;

(ii) the commissioner of education; or

(iii) an employee of the TEA or of a nonprofit corporation created under the Texas Education Code, §43.006.
Figure: 19 TAC §33.5(l)(2)(J)(iii) (No change.)

(K) A PSF Service Provider shall file a report annually with the TEA's PSF office, in the format specified by the PSF staff, on or before January 15 of each year. The report will be deemed to be filed when it is actually received. The report shall be for the time period beginning on December 1 of the previous year and ending on November 30 of the current year. It shall list any individuals who served in any of the following capacities at any time during the reporting period:

(i) all members of the governing body of the PSF Service Provider;

(ii) the officers of the PSF Service Provider;

(iii) any broker who conducts transactions with PSF funds;

(iv) all members of the governing body of the firm of a broker who conducts transactions with PSF funds; and

(v) all officers of the firm of a broker who conducts transactions with PSF funds.

(L) This subsection does not apply to campaign contributions.

(M) Each SBOE Member and each PSF Service Provider shall, no later than January 15, file an annual report affirmatively disclosing any violation of this code of ethics known to that person during the previous year which has not previously been disclosed in writing to the commissioner of education for distribution to all board members, or affirmatively state that the person has no knowledge of any such violation. For purposes of this subparagraph only, "SBOE Member" means only the individual elected official.

(m) Compliance with professional standards.

(1) SBOE Members and PSF Service Providers who are members of professional organizations which promulgate standards of conduct must comply with those standards.

(2) PSF Service Providers must comply with the Code of Ethics and Standards of Professional Conduct of the Association for Investment Management and Research.

(n) Transactions between PSF Service Providers and/or consultants.

(1) PSF Service Providers or persons who act as consultants to the SBOE regarding investment and management of the PSF shall not engage in any transaction involving the assets of the PSF with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(2) PSF Service Providers and/or consultants to the SBOE who provide advice regarding investment and management of the PSF shall report to the SBOE on a quarterly basis all investment transactions or trades and any fees or compensation paid in connection with the transactions or trades with another PSF Service Provider or a person who acts as a consultant to the SBOE regarding investment and management of the PSF.

(o) Compliance and enforcement.

(1) The SBOE will enforce this rule through its chair and vice chair and the commissioner of education.

(2) Any violation will be reported to the chair and vice chair of the SBOE and the commissioner of education and a recommended action will be presented to the SBOE. A violation of this section may result in the termination of the contract or a lesser sanction. Repeated minor violations may also result in the termination of the contract.

(3) The executive director of the PSF shall act as custodian of all statements, waivers, and reports required under this section for purposes of public disclosure requirements.

(4) The ethics officer of the TEA may respond to inquiries concerning the provisions of this section. The ethics officer may confer with the general counsel and the executive director of the PSF.

(5) No payment shall be made to a PSF Service Provider who has failed to timely file a completed report as described by subsection (k) of this section, until a completed report is filed.

(p) Ethics training. The SBOE shall receive annual training regarding state ethics laws through the Texas Ethics Commission and the TEA's ethics officer.

(q) TEA general ethical standards. The commissioner of education and PSF staff shall comply with the General Ethical Standards for the Staff of the Permanent School Fund and the Commissioner of Education.

(r) A new report required by an amendment to the code of ethics need only concern events after the effective date of the amendment. An amendment to a rule that presently requires a report does not effect the reporting period unless the amendment explicitly changes the reporting period.

(s) Statutory statement.

(1) A "statutory financial advisor or service provider" as defined in this subsection shall on or before April 15 file a statement as required by Texas Government Code, §2263.005, with the commissioner of education and the state auditor, for the previous calendar year. The statement will be deemed filed when it is actually received. A statutory financial advisor or service provider shall promptly file a new or amended statement with the commissioner of education and the state auditor whenever there is new information required to be reported under Texas Government Code, §2263.005(a).

(2) A "statutory financial advisor or service provider" is an individual or business entity, including a financial advisor, financial consultant, money or investment manager, or broker, who is not an employee of the TEA, but who provides financial services or advice to the TEA or the SBOE or an SBOE member in connection with the management and investment of the PSF and who may reasonably be expected to receive, directly or indirectly, more than $5,000 in compensation from the TEA or the SBOE during a fiscal year.

(3) An annual statement required to be filed under this subsection will be made using the form developed by the state auditor.

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

Filed with the Office of the Secretary of State on November 17, 2003.

TRD-200307915
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Effective date: December 7, 2003
Proposal publication date: October 3, 2003
For further information, please call: (512) 463-9701

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CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER C. OTHER PROVISIONS

19 TAC §74.33

The State Board of Education (SBOE) adopts new §74.33, concerning curriculum requirements, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8485) and will not be republished. The adopted new section describes additional requirements for social studies classes for Grades 3 - 12, in response to House Bill (HB) 1776, 78th Texas Legislature, 2003.

Texas Education Code, §29.907, resulting from HB 1776, sets forth a date change for Celebrate Freedom Week to include the week of November 11 and recitation requirements for students in Grades 3 - 12. The legislation specifies that appropriate instruction must include the intent, meaning, and importance of the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical contexts, including recitation by students.

The adopted new 19 TAC §74.33 describes instruction that must be included during Celebrate Freedom Week and the specific text that students are required to recite. The new rule provides school districts the authority to excuse students from the recitation under certain conditions.

In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2004, as necessary to comply with HB 1776 that requires the rule take effect not later than December 31, 2003.

The following comment was received regarding adoption of the new section.

Comment. An individual commented that the agency should take into consideration the religious beliefs of the founders of the nation as it considers rules for schools to comply with HB 1776 and Celebration of Freedom Week for Texas public schools. The individual expressed the opinion that anyone with the slightest instruction in American history, and the Christian faith, must honestly acknowledge the importance of the Christian world view

and its relationship to the founding and establishing of our nation.

Agency response. New 19 TAC §74.33, Additional Requirement for Social Studies Classes for Grades 3 - 12, was proposed in accordance with and to implement the TEC, §29.907, as amended by HB 1776, 78th Texas Legislature, 2003.

The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which authorizes the State Board of Education (SBOE) to establish curriculum and graduation requirements; and TEC, §29.907, which authorizes the State Board of Education to adopt rules requiring each social studies class to include appropriate instruction concerning the Declaration of Independence and the United States Constitution, including the Bill of Rights, in their historical contexts.

The new section implements the TEC, §7.102(c)(4) and §29.907.

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

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SUBCHAPTER E. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2004 - 2005

19 TAC §§74.51 - 74.54

The State Board of Education (SBOE) adopts new §§74.51 - 74.54, concerning curriculum requirements. The adopted new sections establish the graduation requirements for students entering Grade 9 beginning with school year 2004 - 2005 and thereafter. New §74.51 and §74.52 are adopted without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8486) and will not be republished. New §74.53 and §74.54 are adopted with changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8486).

Adopted new §§74.51 - 74.54 address provisions relating to high school graduation requirements; the minimum high school program; the recommended high school program; and the distinguished achievement high school program--advanced high school program for students entering Grade 9 beginning with school year 2004 - 2005 and thereafter. These requirements are basically similar to those for students entering Grade 9 beginning with school year 2001 - 2002 with two other new provisions.

New language is adopted to include the requirement of Texas Education Code (TEC), §28.025(b), as amended by legislation during the 77th Texas Legislature, 2001, that beginning with the 2004 - 2005 school year, students entering Grade 9 must enroll in courses necessary to complete the curriculum requirements for the recommended high school program. Adopted new 19 TAC §74.51(c) establishes the requirement that entering freshmen in 2004 begin with at least the recommended high school program unless a school official, student, and parent determine that the student should be permitted to take courses under the minimum plan.

New language is also included to allow technology applications credit to be satisfied by completion of state-approved technology applications innovative courses as well as coherent sequences of career and technology education (CATE) courses under the recommended and distinguished achievement programs. The provision to allow credit for state-approved technology applications innovative courses are found in adopted new 19 TAC §74.53(b)(10)(A) and 19 TAC §74.54(b)(10)(A). The provisions to allow credit for CATE courses taken within a coherent sequence are reflected in adopted new 19 TAC §74.53(b)(10)(D) and 19 TAC §74.54(b)(10)(D).

In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2004, as necessary provide school districts with ample notification to update graduation plans in advance of implementation with school year 2004 - 2005.

In response to comments, the following changes have been made to §74.53 and §74.54 since published as proposed.

Language was modified in subsection (b)(10)(D) of §74.53 and §74.54 to specify that students pursuing the option of obtaining technology applications credit by completing a coherent sequence of CATE courses must demonstrate proficiency in technology applications prior to the beginning of Grade 11 through credit by examination as described in §74.24 of this title (relating to Credit by Examination).

The following comments were received regarding adoption of the new sections.

Comment. An individual from Garland ISD, an individual from the Agriculture Teachers' Association, and an individual from the National Federation of Independent Business/Texas supported the proposed amendment because it provides needed flexibility to give students appropriate credit for the achievement and competence they gain by taking technology-rich career and technology education courses.

Agency response. The agency agrees that the proposed amendments allow greater flexibility for students and districts.

Comment. An individual from Austin Community College opposed the proposed amendments, stating that allowing additional courses to qualify for Technology Applications credit would result in reduced curriculum rigor.

Agency response. The agency disagrees. Greater flexibility does not automatically result in reduced course rigor. An addition to the proposed rule will allay this concern by requiring a student who takes a coherent sequence of career and technology education courses to pass a proficiency exam by the beginning of Grade 11 in order to be awarded technology applications credit.

Comment. An individual from Cisco Systems, Inc., requested that Internetworking Technologies I and II also be allowed for Technology Applications credit.

Agency response. Staff may need to further explore adding additional appropriate courses to the list of courses that satisfy the technology applications credit for graduation.

Comment. An individual from the Texas Business and Education Coalition spoke against the amendment as proposed, suggesting adding some type of test to ensure that students taking coherent sequences of career and technology education courses are proficient in technology applications curriculum before awarding technology applications credit. The individual also commented that every effort should be made to ensure that students retain the ability to graduate under at least the recommended high school program (RHSP) so they will remain eligible for scholarship money that is available to RHSP graduates.

Agency response. The agency agrees and the rule has been modified to require a student who takes a coherent sequence of career and technology education courses to pass a proficiency exam by the beginning of Grade 11 in order to be awarded technology applications credit.

The new sections are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the State Board of Education (SBOE) to establish curriculum and graduation requirements; and §28.025(a), which authorizes the SBOE by rule to determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The new sections implement the Texas Education Code, §7.102(c)(4) and §28.025.

§74.53. Recommended High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Recommended High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits must consist of Level I and Level II in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I - IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications,

Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119 - 125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 through credit by examination as described in §74.24 of this title (relating to Credit by Examination).

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--three and one-half credits. The credits may be selected from the list of courses specified in §74.51(f) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.54. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 24 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (English I for Speakers of Other Languages and English II for Speakers of Other Languages may be substituted for English I and II only for immigrant students with limited English proficiency).

(2) Mathematics--three credits. The credits must consist of Algebra I, Algebra II, and Geometry.

(3) Science--three credits. One credit must be a biology credit (Biology, Advanced Placement (AP) Biology, or International Baccalaureate (IB) Biology). Students must choose the remaining two credits from the following areas. Not more than one credit may be chosen from each of the areas to satisfy this requirement. Students on the Distinguished Achievement High School Program are encouraged to take courses in biology, chemistry, and physics to complete the science requirements.

(A) Integrated Physics and Chemistry (IPC);

(B) Chemistry, AP Chemistry, or IB Chemistry; and

(C) Physics, Principles of Technology I, AP Physics, or IB Physics.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits must consist of Level I, Level II, and Level III in the same language.

(7) Physical education--one and one-half credits to include Foundations of Personal Fitness (one-half credit).

(A) A student may not earn more than two credits in physical education toward state graduation requirements.

(B) The school district board of trustees may allow a student to substitute certain physical activities for the required credits in physical education, including the Foundations of Personal Fitness. The substitutions must be based on the physical activity involved in drill team, marching band, and cheerleading during the fall semester; Junior Reserve Officer Training Corps (JROTC); athletics; Dance I - IV; and two- or three-credit career and technology work-based training courses.

(C) In accordance with local district policy, a school district may award up to two credits for physical education for appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions:

(i) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(ii) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(8) Health education--one-half credit, which may be satisfied by Health 1 or Advanced Health, or Health Science Technology--one credit, which may be satisfied by Introduction to Health Science Technology, Health Science Technology I, or Health Science Technology II.

(9) Speech--one-half credit. The credit must consist of Communication Applications.

(10) Technology applications--one credit, which may be satisfied by:

(A) the following courses in Chapter 126 of this title (relating to Texas Essential Knowledge and Skills for Technology Applications): Computer Science I, Computer Science II, Desktop Publishing, Digital Graphics/Animation, Multimedia, Video Technology, Web Mastering, or Independent Study in Technology Applications, or state-approved technology applications innovative courses;

(B) the following courses in Chapter 120 of this title (relating to the Texas Essential Knowledge and Skills for Business Education): Business Computer Information Systems I or II, Business Computer Programming, Telecommunications and Networking, or Business Image Management and Multimedia;

(C) the following courses in Chapter 123 of this title (relating to the Texas Essential Knowledge and Skills for Technology Education/Industrial Technology Education): Computer Applications, Technology Systems (modular computer laboratory-based), Communications Graphics (modular computer laboratory-based), or Computer Multimedia and Animation Technology; or

(D) the completion of three credits (for students participating in a coherent sequence of career and technology courses or who are enrolled in a Tech Prep high school plan of study) consisting of two or more state-approved career and technology courses in Chapters 119 - 125 and 127 of this title. Districts shall ensure that career and technology courses, including innovative courses, in a coherent sequence used to meet the technology applications credit are appropriate to collectively teach the knowledge and skills found in any of the approved courses listed in subparagraphs (A), (B), and (C) of this paragraph. Students pursuing the technology applications option described in this subparagraph must demonstrate proficiency in technology applications prior to the beginning of Grade 11 through credit by examination as described in §74.24 of this title (relating to Credit by Examination).

(11) Fine arts--one credit, which may be satisfied by any course in Chapter 117, Subchapter C, of this title (relating to Texas Essential Knowledge and Skills for Fine Arts).

(c) Elective Courses--two and one-half credits. The credits may be selected from the list of courses specified in §74.51(f) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary Scholastic Assessment Test (PSAT) that qualifies the student for recognition as a commended scholar or higher by the National Merit Scholarship Corporation, as part of the National Hispanic Scholar Program of the College Board or as part of the National Achievement Scholarship Program for Outstanding Negro Students of the National Merit Scholarship Corporation. The PSAT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses and tech-prep articulated college courses with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

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

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CHAPTER 97. PLANNING AND ACCREDITATION

The State Board of Education (SBOE) adopts the repeal of §§97.1 - 97.5 and new §§97.1 - 97.4, concerning planning, accreditation, and accountability, without changes to the proposed text as published in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8491) and will not be republished. Repealed §§97.1 - 97.5 address accreditation, define accreditation status, describe types of accreditation status, and present criteria for accreditation. Adopted new §§97.1 - 97.4 clarify accountability, describe accountability ratings, present criteria for accountability, and address accountability sanctions authorized under federal law. The adopted repeal and new sections bring the rules into closer alignment with state and federal statute.

Texas Education Code (TEC), §39.072(a), authorizes the SBOE to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating. Further, TEC, §39.051(a), authorizes the SBOE to adopt a set of indicators of the quality of learning on a campus. Opinion No. GA-0060 issued by the Attorney General Greg Abbott on April 15, 2003, clarifies the authority of the SBOE and the commissioner of education with regard to the adoption of academic excellence indicators and the evaluation of school districts. Indicators adopted by the SBOE prior to legislation passed by the 77th Texas Legislature, 2001, remain in effect but that legislation eliminated the authority of the SBOE to adopt additional academic excellence indicators.

The adopted repeal of and new rules in 19 TAC Chapter 97, Subchapter A, reduce redundancies and make minor clarifications to language. In addition, adopted new §§97.1 - 97.4 reflect legislation passed by the 78th Texas Legislature, 2003; clarify that the specific procedures used to determine district and campus accountability ratings would be established by the commissioner of education as provided in state statute and that these procedures would be adopted by reference in commissioner's rules; clarify that the commissioner of education may lower district and campus accountability ratings based on the findings of an on-site investigation conducted under TEC, §39.074, or a special accreditation investigation conducted under TEC, §39.075; and address accountability sanctions authorized under the federal *No Child Left Behind Act*.

In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2004, as necessary to implement the latest policy in a timely manner.

No comments were received regarding adoption of the repeals and new sections.

SUBCHAPTER A. ACCREDITATION

19 TAC §§97.1 - 97.5

The repeals are adopted under the Texas Education Code (TEC), §7.102(c)(29), which directs the SBOE to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; and §39.072, which authorizes the SBOE to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating.

The repeals implement the Texas Education Code, §7.102(c)(29) and §39.072.

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

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CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER A. ACCOUNTABILITY

19 TAC §§97.1 - 97.4

The new sections are adopted under the Texas Education Code (TEC), §7.102(c)(29), which directs the SBOE to perform duties in connection with the public school accountability system as prescribed by TEC, Chapter 39; and §39.072, which authorizes the SBOE to adopt rules to evaluate the performance of school districts and to assign to each district a performance rating.

The new sections implement the Texas Education Code, §7.102(c)(29) and §39.072.

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

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CHAPTER 101. ASSESSMENT

SUBCHAPTER E. LOCAL OPTION

19 TAC §101.101

The State Board of Education (SBOE) adopts an amendment to §101.101, concerning student assessment, with changes to the proposed text as published in the August 1, 2003, issue of the *Texas Register* (28 TexReg 5975). The section addresses group-administered tests and requirements relating to the reporting of test results. The adopted amendment requires that a testing company or local school district provide results for district-commissioned, group-administered tests, not just norm-referenced tests. Also, the adopted amendment ensures that the same form of the testing instrument would not be repeated for more than three years.

Texas Education Code (TEC), §39.026, provides for the optional use of locally adopted criterion-referenced or state-approved norm-referenced assessment instruments to be used in addition to the assessment instruments. For group-administered achievement tests given under this local option, TEC, §39.032, requires that the school district not use the same form of an assessment instrument for more than three years and that the standardization norms not be more than six years old at the time the test is administered.

In a letter to the commissioner of education, Texas State Representative Kent Grusendorf expressed several concerns regarding agency compliance with this section and suggested corresponding actions to address these concerns. The commissioner responded that the agency agreed with Representative Grusendorf's assessment and would take appropriate actions to address these concerns. These actions included recommending to the SBOE a proposed amendment to §101.101, Group-Administered Tests, to clarify that: a testing company is required under TEC, §39.032, to provide results for all district-commissioned, group-administered tests, not just norm-referenced tests; and that use of the same form of the testing instrument is not to be repeated for more than three years.

The amendment to §101.101 contains an obligation for testing companies and school districts to report the results of certain tests. It requires new data to be sent in electronic form for district-commissioned tests. Test vendors and school districts would electronically collect data from district-commissioned standardized tests and include the data in the agency's website. At this time, this reporting is expected to be done on an annual cycle, i.e., test results from the entire school year would be sent to Texas Education Agency (TEA) at one time.

At the July 2003 meeting the SBOE approved the proposed amendment for first reading and filing authorization. The proposed amendment was presented to the SBOE for second reading and final adoption at the September 2003 meeting. In response to concerns raised during public testimony at the September 2003 meeting, the SBOE, as recommended by

the Committee on Instruction, deferred second reading and final adoption to allow district representatives, test publishers, Representative Kent Grusendorf's office, and agency staff additional time to further discuss the impact of the proposed amendment. Staff was directed to summarize any resulting public comments at the November 2003 meeting.

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

Subsection (a) was modified to further clarify what types of tests fit the definition of an assessment instrument affected under TEC, §39.032. The additional clarification specifies that tests reported publicly to the local board of trustees would be included in the definition while an interim benchmark assessment or a released statewide assessment would not be included. Additional clarification is also provided about the list of state-approved, norm referenced group-administered achievement tests.

Subsection (b) was modified to reinforce that data provided in test results is to be included as applicable.

Subsection (d) was modified to clarify that applicable procedures be followed for test security and confidentiality.

Subsection (e) was modified to specify that districts are only obligated to report results of summative tests that meet the definition of this rule and to clarify that the reporting is to be in electronic form in the manner prescribed by the TEA.

In accordance with TEC, §7.102(f), the SBOE approved this rule action at second reading and final adoption by a vote of two-thirds of its members to specify an effective date earlier than September 1, 2004, as necessary to implement the latest policy in a timely manner.

The following comments were received regarding adoption of the amendment.

The Texas Statewide Network of Assessment Professionals (TSNAP), a group of assessment professionals representing many local school districts, expressed concerns about this proposed amendment. In a letter to Representative Grusendorf, TSNAP stated its concerns were "focused primarily on the pass-through costs of implementation to the districts." The following provides TSNAP's comments and agency responses:

Comment. Cost to districts for this additional reporting requirement will impact the local district assessment budget at a time of a budgetary crisis in public education.

Agency response. The agency agrees that there is a fiscal impact on businesses and local school districts that participate in this local option. Based on information from test publishers and educators on these proposed changes, the new reporting requirements are estimated to cost test publishers and districts about $1.00 to $1.50 per student participating in this local assessment option. No data have yet been collected at the state level concerning the number of students that are tested under this local option.

Comment. Varying types, schedules, and methods of utilizing locally-purchased tests make comparability very difficult and could cause confusion for the public and other stakeholders.

Agency response. The agency agrees that the problem of comparability across the diverse data from the variety of assessments used under the local option is an issue. Local districts and test publishers should consider ways to educate the public on the appropriate interpretation of this data in their district. The agency plans to include a disclaimer with data made available at the state level.

Comment. Commercially-produced assessments are not subject to the Texas Essential Knowledge and Skills (TEKS) curriculum guidelines and may lead to misinterpretation of results when discussing Texas student achievement versus national student achievement.

Agency response. The agency agrees that the tests under the local option may not be aligned to the TEKS curriculum like the Texas Assessment of Knowledge and Skills (TAKS) assessments. Local districts and test publishers should consider ways to educate the public on the differences in design and purpose between these tests and in their corresponding appropriate uses and interpretations of their data. The agency plans to include a disclaimer with data made available at the state level.

A representative of Woodville Independent School District (ISD) and a representative of TSNAP testified at the September 2003 Committee on Instruction meeting. The following provides their comments and agency responses:

Comment. The local school district owns the test data and should not be required to report the results to the TEA.

Agency response. The agency agrees that the district owns the test data, but TEC, §39.032(b), specifies that a company or organization that grades a group-administered achievement test must report the results to the district and to the agency.

Comment. Both individuals testified that the cost to send the data to TEA, via electronic transmission, would be borne by the school districts that purchased the tests. The proposed amendment would therefore constitute an unfunded mandate to school districts.

Agency response. The agency agrees that there is a fiscal impact on businesses and local school districts that participate in this local option.

Comment. Districts will be forced to focus time, energy, and resources to the efforts of this reporting guideline and away from the state and federal accountability processes in place.

Agency response. The agency agrees that the proposed amendment places additional reporting requirements on school districts.

Following the September 2003 directive from the Committee on Instruction to convene stakeholders to discuss the proposed amendment, the agency met with a group of district testing directors and test publishers on October 3, 2003. Participants in the focus group expressed concerns about possible misinterpretation of performance results given that districts use different tests for a variety of purposes and with a variety of student populations, including subgroups of students. The focus group proposed that the agency develop an on-line index that would allow researchers or the public to easily search which locally adopted norm-referenced or criterion-referenced tests were given in a district. Those interested in actual performance results would contact school districts to get this information through the routine open records request process.

Focus group participants asked staff to review the concept of an on-line index with Representative Grusendorf's office and then draft revised proposed rule language based on that meeting. Staff met with Representative Grusendorf, who reiterated the intent of the statute. Accordingly, the adopted amendment continues to reflect the requirement that additional data be provided for

researchers and the public. However, additional modifications to the proposed amendment since the September 2003 meeting are intended to provide clarification to school districts.

The following additional comment and agency response came from the October 3 focus group meeting:

Comment. Several test company representatives expressed concern about the difficulty of developing new test forms in Spanish to meet the requirement that the same form of an assessment instrument not be used for more than three years.

Agency response. The requirement exists in current statute and cannot be changed by SBOE rule.

Testimony was also presented during the November 6, 2003, meeting of the Committee on Instruction. The following summarizes those comments and agency responses:

Comment. The test coordinator of the Fort Bend ISD commented that she was still concerned about the potential pass through costs to districts due to the proposed amendment's additional reporting requirements.

Agency response. The agency agrees and offered to further limit the reporting requirement to summative, as opposed to interim or formative, tests.

Comment. The TSNAP president commented that she was concerned about the potential for the misinterpretation of the group-administered test data that will be posted to the agency web site as a result of the proposed amendment's passage.

Agency response. The agency agrees that there is a comparability issue. The agency plans to include a disclaimer with the district data made available on the agency web site.

The amendment is adopted under Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendment implements the TEC, Chapter 39, Subchapter B.

§101.101. Group-Administered Tests.

(a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly (e.g., to the local board of trustees) in the aggregate. A test given for a special purpose, such as program placement or individual evaluation (e.g., a spelling test, a diagnostic test such as a reading inventory or interim benchmark assessment, or a released statewide assessment instrument), is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved, norm-referenced group-administered achievement tests that test publishers certify meet the requirements of TEC, §39.032.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees. The company or organization shall provide results in electronic form in the same form that such information is provided to the school district to the Texas Education Agency (TEA) annually and data shall include as applicable the name, level, and form of the test; the year in which the test was normed; and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.

(c) A company or organization that reports results using national norms or state standards that do not comply with the TEC, §39.032, is liable for damages as stated in the TEC, §39.032(d).

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the applicable procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and Confidentiality). A school district may not use the same form of any test defined in subsection (a) of this section for more than three years.

(e) Any school district that develops its own summative test that meets the definition of subsection (a) of this section is also obligated to report those results in electronic form to the TEA in the manner prescribed by the TEA.

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

Filed with the Office of the Secretary of State on November 17, 2003.

TRD-200307920
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Effective date: December 7, 2003
Proposal publication date: August 1, 2003
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 19. POLYGRAPH EXAMINERS BOARD

CHAPTER 391. POLYGRAPH EXAMINER INTERNSHIP

22 TAC §391.3

The Polygraph Examiners Board adopts an amendment to §391.3, concerning Internship Training Schedule, with changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8282).

At the November 17, 2003 board meeting the Board reviewed each rule, after taking public comment, the Board voted to adopt the amendments to §391.10(a)(1)(B) and §391.5 as written. However on the amendments to Board Rule 391.3 (15), the Board voted to make changes by deleting the following: "because of the apparent conflict of interest in processing the applicant for final licensure."

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

§391.3. Internship Training Schedule.

The following internship schedule has been approved and adopted by the Board as a minimum type and number of hours of any internship training program to be utilized in course of supervised instruction:

(1) History and development of polygraph--four hours.

(2) Legal and ethical aspects of polygraph.

(A) Texas Polygraph Examiners Act--10 hours.

(B) Statements and reports, civil rights, examiner and professional ethics--10 hours.

(3) Physiology--24 hours.

(A) Nervous system, autonomic nervous system.

(i) Sympathetic system.

(ii) Parasympathetic system.

(B) Circulatory system and the heart.

(C) Respiratory system.

(D) Effects of drugs, alcohol, and illness.

(4) Psychology--24 hours.

(A) General.

(B) Abnormal.

(C) As applied to polygraphy.

(5) Interrogation and interviews--100 hours.

(A) Receiving case briefing.

(B) Pre-test interview.

(C) Post-test interview.

(6) Chart interpretation--120 hours.

(A) All types of tests and responses.

(B) Chart marking.

(C) Test results: No Deception Indicated, Deception Indicated, Inconclusive or No Opinion.

(7) Question formulation and test construction--120 hours.

(A) All types of tests.

(B) All types of questions.

(C) Semantics.

(8) Instrumentation--10 hours.

(A) Construction and maintenance.

(B) Trouble shooting.

(C) Nomenclature.

(9) Summary and general review--10 hours.

(10) Supervised testing and interviewing--minimum of 30 tests.

(11) Counseling and critique as required in opinion of sponsor.

(12) A list of approved polygraph schools be maintained in the Board office and will be made available upon request. Board approval of a polygraph school will be based on current American Polygraph Association (A.P.A.) accreditation.

(13) The Board may request and require inspection and review of the internship program of any licensed examiner or internee at any time to ascertain compliance with the program approved by the Board.

(14) Each sponsoring polygraph examiner shall submit to the Board progress reports every 60 days from the date of Board approval of the internship on each intern on forms furnished by the Board. To serve as a sponsor for an intern polygraph examiner, a Texas licensed polygraph examiner must have held an original Texas polygraph license continuously for at least two years immediately preceding the application and completed a minimum of 40 hours of continuing education in the two years immediately proceeding the sponsorship. Documentation of this continuing education must be on file with the Board office prior to approval of the examiner as a sponsor.

(15) No licensed examiner shall have more than two (2) interns under his /her sponsorship at any one time. Board Members or Polygraph Board Staff may not act as sponsors.

(16) The Secretary of the Board and/or the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications) and:

(A) who is a graduate of a polygraph examiners course approved by the Board and has completed not less than six months of internship training; or

(B) who is not a graduate of an approved polygraph examiners course and has completed not less than 12 months of internship training; and

(C) the Executive Officer may approve an intern applicant who meets the qualifications set forth in §391.2 of this title (relating to Procedure and Qualifications).

(17) The intern licensing period shall begin:

(A) on the date of the first class day, of a Board approved polygraph basic school and continue as long as the intern maintains a passing grade in that class provided the intern has, prior to the commencement of the school, completed all of the requirements for the intern license;

(B) if the school has begun and the applicant has not completed all of the requirements for licensure, the internship shall begin on the date the applicant is approved for the intern license; or

(C) if the applicant is not a graduate of an approved polygraph examiners course but intends to complete not less than 12 months of internship training; the internship shall begin on the date the applicant is approved for the intern license by the Board.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308062
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: December 14, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 424-2058

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22 TAC §391.5

The Polygraph Examiners Board adopts an amendment to §391.5, concerning Supervision and Internship Review, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8283).

The section was amended to include the requirement that Interns will be responsible in providing to the Sponsor a weekly submission of all work conducted or a written statement indicating that no test(s) have been conducted during that week.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308063
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: December 14, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 424-2058

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22 TAC §391.10

The Polygraph Examiners Board adopts an amendment to §391.10, concerning Procedures and Qualifications of Current and Former Governmental Polygraph Examiners, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8284).

The section was amended to include a requirement for applicants during an internship program to conduct fifty (50) polygraph examinations for a period of at least six months or longer.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Polygraph Examiners Act, Article 4413 (29cc), §6, which provides the board with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of the Polygraph Examiners Act, Article 4413 (29cc).

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308064
Frank DiTucci
Executive Director
Polygraph Examiners Board
Effective date: December 14, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 424-2058

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PART 21. TEXAS STATE BOARD OF EXAMINERS OF PSYCHOLOGISTS

CHAPTER 463. APPLICATIONS AND EXAMINATIONS

22 TAC §463.13

The Texas State Board of Examiners of Psychologists adopts amendments to §463.13, concerning Requirements for Experienced Out-of-State Applicants without changes to the proposed text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7151).

The amendments are being adopted in order to correct technical errors in the text of these rules.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307988
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 9, 2003
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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22 TAC §463.25

The Texas State Board of Examiners of Psychologists adopts amendments to §463.25, concerning Foreign Graduates without changes to the proposed text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7152).

The amendments are being adopted to clarify that certified copies of foreign graduates' diplomas may be accepted during the application process.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307989
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 9, 2003
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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CHAPTER 471. RENEWALS

22 TAC §471.2

The Texas State Board of Examiners of Psychologists adopts repeal to §471.2, concerning Renewal Forms without changes to the proposed text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7152).

The amendments are being repealed in order to add a new rule to clarify information required on renewal forms.

The adopted amendments will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307990
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 9, 2003
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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22 TAC §471.2

The Texas State Board of Examiners of Psychologists adopts new §471.2, concerning Renewal Forms without changes to the proposed text as published in the August 29, 2003 issue of the *Texas Register* (28 TexReg 7153).

The new rule is being adopted to clarify information that is required on renewal forms.

The new rule will make the rule easier for the licensees and public to follow and understand.

No comments were received regarding the adoption of the new rule.

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

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307991
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: December 9, 2003
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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CHAPTER 473. FEES

22 TAC §473.1

The Texas State Board of Examiners of Psychologists adopts amendments to §473.1, concerning Application Fees (Not Refundable) without changes to the proposed text as published in the August 29, 2003 *Texas Register* (28 TexReg 7153).

The amendments are being adopted in order to implement HB 2985 which requires Health Profession Council member agencies to raise initial application fees by $5 to fund a new Office of Patient Protection.

The adopted amendments will make allow the agency to adhere to legislative mandate.

No comments were received regarding the adoption of the amendments.

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

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307992
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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22 TAC §473.3

The Texas State Board of Examiners of Psychologists adopts amendments to §473.3, Annual Renewal Fees (Not Refundable) with changes to the proposed text as published in the August 29, 2003 *Texas Register* (28 TexReg 7154).

The amendments are being adopted in order to implement HB 2985 which requires Health Profession Council member agencies to raise annual renewal fees by $1 to fund a new Office of Patient Protection.

The adopted amendments will allow the agency to adhere to legislative mandate.

No comments were received regarding the adoption of the amendments.

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

§473.3. Annual Renewal Fees (Not Refundable).

(a) Psychological Associate Licensure--$91

(b) Psychological Associate Licensure over the age of 70--$16

(c) Provisionally Licensed Psychologist--$86

(d) Provisionally Licensed Psychologist over the age of 70--$16

(e) Psychologist Licensure--$181

(f) Psychologist Licensure over the age of 70--$16

(g) Psychologist Health Service Provider Status--$21

(h) Psychologist Health Service Provider status over the age of 70--No Fee.

(i) Licensed Specialist in School Psychology--$34

(j) Licensed Specialist in School Psychology over the age of 70--$14

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307993
Sherry L. Lee
Executive Director
Texas State Board of Examiners of Psychologists
Effective date: January 1, 2004
Proposal publication date: August 29, 2003
For further information, please call: (512) 305-7700

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 21. TRADE PRACTICES

SUBCHAPTER Z. DATA COLLECTING AND REPORTING RELATING TO MANDATED HEALTH BENEFITS AND MANDATED OFFERS OF COVERAGE

28 TAC §21.3402, §21.3404

The Commissioner of Insurance adopts amendments to §21.3402 and §21.3404, concerning the collection and reporting of data related to mandated benefits and offers of coverage. The amendments are adopted without changes to the proposed text as published in the October 10, 2003, issue of the *Texas Register* (28 TexReg 8808) and will not be republished.

The amendments are necessary to provide the reported information to the Legislature in a more timely fashion, as well as to respond to a petition for adoption of rules. The change to the first reporting date is in response to a petition from the Texas Association of Life & Health Insurers (TALHI). As originally adopted, 28 TAC §21.3404 required the first report on mandated benefits to be submitted by March 1, 2004. TALHI's petition urged that compliance on this date would place a strain on companies, as it was the same date that they must file annual financial statements. The petition requested an amendment to change the date of the first report from March 1, 2004 to either April 1 or May 1, 2004. The amendment changes the first reporting date from March 1, 2004 to April 1, 2004, with subsequent reports due annually on December 1. The change in subsequent reporting deadlines will address TALHI's concern as well as decrease the age of the most recent data available to the Legislature, from approximately thirteen months to four months, at the commencement of each regular session. The amendment will thus enhance the quality and timeliness of the report for the Legislature.

The amendment to §21.3402 adds a definition of "reporting year" to clarify that the reporting year begins on October 1 of each year and ends on September 30 of the following year. The amendment to §21.3404 effects changes to the annual reporting deadline. The amendment changes the deadline for the first report from March 1, 2004, to April 1, 2004. This report will include data collected from January 1, 2003, through December 31, 2003. Subsequently, the adoption would require entities subject to the rule to gather data during the reporting year (October 1 of each year through September 30 of the following year) and report the data by December 1 following the end of each reporting year. Thus, the second report will contain data gathered during the reporting year period of October 1, 2003 through September 30, 2004, and be due on December 1, 2004.

No comments were received.

The amendments are adopted under the Insurance Code §38.252 and §36.001. Section 38.252 directs the Commissioner to adopt rules requiring the reporting of specific data by health benefit plan issuers. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on November 21, 2003.

TRD-200308040
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: December 11, 2003
Proposal publication date: October 10, 2003
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 3. GENERAL PROVISIONS

SUBCHAPTER C. SERVICES AND PRODUCTS

31 TAC §3.31

The Texas General Land Office adopts without changes as proposed an amendment to Title 31, Part 1, Chapter 3, Subchapter C, §3.31 relating to Fees of the Texas Administrative Code, as published in the September 26, 2003, edition of the *Texas Register* (29 TexReg 8298). The adopted amendment provides the Commissioner the discretion to waive the currently required in-kind contract maintenance fees. The Texas General Land Office will develop guidelines based on economies of scale to determine whether the fees shall be imposed.

The adopted amendment will increase the flexibility of the Texas General Land Office to supply natural gas to its customers.

No comments were received regarding the proposed amendment.

The amendment to this section is adopted under Texas Natural Resources Code §31.051, which authorizes the Texas General Land Office to make and enforce suitable rules consistent with the law.

The adopted amendment affects §§35.101 through 35.106 of the Utilities Code.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308067
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Effective date: December 14, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 305-9129

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CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER B. COASTAL EROSION PLANNING AND RESPONSE

31 TAC §15.41, §15.42

The Texas General Land Office (Land Office) adopts amendments to §15.41, relating to Evaluation Process for Coastal Erosion Studies and Projects and §15.42, relating to Funding Projects from the Coastal Erosion Response Account. The amendments to §15.42 are adopted without changes to the proposed text as published in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9056) and will not be republished. Amendments to §15.41 are adopted with changes to the proposed text as published in the October 17, 2003, issue of the *Texas Register* (28 TexReg 9056). The change to proposed amendments to §15.41 includes a change to the deadline for submitting project goal summaries in Subsection (1)(A) from December 1 to December 31, 2003, for the current fiscal biennium only. The change is necessary to provide for a deadline after the effective date of these rule changes. The Land Office will permit any potential project partner that has already submitted a project goal summary prior to this rule change an opportunity to amend its project goal summary in order to address the requirements of these amendments.

The amendments are adopted pursuant to the Joe Faggard Coastal Erosion Planning and Response Act, 76th Leg., R.S., S.B. 1690 (CEPRA), as amended by S.B. 710, 78th Leg., Regular Session, Texas Natural Resources Code, Chapter 33, Subchapter H. The CEPRA requires the Land Office to implement a program of coastal erosion avoidance, remediation, and planning. S.B. 710 amended the CEPRA, §33.603, to increase the required percentage of shared project cost borne by a qualified project partner from the present 15% to 25% for all beach nourishment projects (public or bay beaches) and increase the match for all other studies and projects, including bay shoreline protection and marsh restoration projects to 40%. S.B. 710 also amended the CEPRA to allow the Commissioner of the General Land Office to designate up to one third of the CEPRA appropriation to one large-scale beach nourishment project on a public beach each biennium that would require no local match.

The amendments to subparagraph 15.41(1)(A) include changes to the project goal summaries required to be furnished by potential project partners to provide information that will clarify how the proposed project will lessen the negative economic impacts of the erosion problem in the area and benefit public and private infrastructure, resources and private property impacted or threatened by erosion. In addition, project goal summaries must include information to allow the Land Office

to determine the required percentage of shared project cost to be borne by the potential project partner. The project goal summary must also include information that will allow the Land Office to determine whether the project should be managed by the potential project partner or by the Land Office. Further, the project goal summaries must identify potential public and private cosponsors and sources of funding with an estimate of the percentage of the project to be funded with funds from a source other than the Coastal Erosion Response Account. The amendments to subparagraph 15.41(1)(D) reorder the criteria used in the second stage evaluation of project goal summaries for greater clarity and expand the priority criteria to include consideration of whether private financial participation in the project is maximized and the economic benefits to the state relative to the cost to the state of the project. The amendment to subparagraph 15.41(2)(B) clarifies that funds from a source other than the Coastal Erosion Response Account must be used to offset the qualified project partner's cost sharing requirement. The amendment adds new subparagraph 15.41(2)(E) with factors the Land Office will consider in determining whether to fund a proposed large-scale project without a cost share requirement as permitted by S.B. 710. Those factors include: whether the total cost of the project exceeds one-third of the amount appropriated to the Land Office for coastal erosion and response; whether a sand source for the project has been identified by the qualified project partner; funding available to the qualified project partner from sources other than the coastal erosion response account; and the potential impact of the project on coastal erosion in relation to the total estimated cost of the project.

The amendments to §15.42 permit the Land Office to determine whether the project will be managed by the Land Office or by the qualified project partner with reimbursement from the Coastal Erosion Response Account for project expenses for work completed in the amount provided in the project cooperation agreement. This will allow the Land Office, in its sole discretion, to manage a project if the qualified project partner lacks expertise or experience. Alternatively, this would also allow a more experienced qualified project partner to assume more responsibility for managing a project. The amendments to §15.42 also include language requiring that the qualified project partner pay the specified percentage of the shared project costs in accordance with the changes made by S.B. 710. Finally, changes made throughout §15.41 and §15.42 include the substitution of references to the "coastal erosion response account" with the shorthand term the "Account."

No comments were received concerning the proposed amendments.

The justification for these amendments is that they establish and inform the public of the criteria that the Land Office will use in selecting a large-scale beach nourishment project with no cost sharing requirement. The ability to fund a large-scale beach nourishment project will provide for a more systematic and cost-effective approach to erosion response. A large-scale project will provide longer lasting protection to public infrastructure and the local governmental tax base, and will provide efficiencies of scale. The amendments will also benefit the public by making the rules consistent with statutory changes concerning cost share requirements. Finally, the rule change providing the option for management of erosion response projects primarily by the qualified project partner, provides an opportunity for more local control of a project which has intrinsic public benefit. However, the rule allows the Land Office to manage a project if the qualified project partner lacks expertise or experience.

The Land Office evaluated the rulemaking action as adopted in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the action is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the statute. "Major environmental rule" means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The amendments to Chapter 15, Subchapter B, as adopted are not anticipated to adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state because the amendments as adopted implement legislative requirements in SB 710 relating to the share of the cost of a coastal erosion study or project required to be paid by a qualified project partner under an agreement with the commissioner of the Land Office.

The amendments are adopted under the Texas Natural Resources Code, §33.602(c) that provides the commissioner of the General Land Office with the authority to adopt rules to implement Subchapter H, Chapter 33, Texas Natural Resources Code, concerning coastal erosion. Texas Natural Resources Code, §§33.601 through 33.605 are affected by the amendment as adopted.

§15.41. Evaluation Process For Coastal Erosion Studies And Projects.

The General Land Office (Land Office) will evaluate potential projects for funding from the coastal erosion response account (Account) based on a two-stage evaluation process as described in this section, including an initial evaluation of project goal summaries followed by a further evaluation of preferred alternatives.

(1) Initial evaluation of project goal summaries submitted to the Land Office by potential project partners.

(A) A potential project partner seeking funds from the Account must submit a project goal summary to the Land Office no later than December 1 of the first year of the state fiscal biennium in which funding is sought; provided that the Land Office in its discretion may accept a project summary that will address an emergency situation after December 1. Notwithstanding the foregoing, the Land Office may accept a project goal summary or an amendment to a previously submitted project goal summary no later than December 31, 2003, for the state fiscal biennium for fiscal years 2004-2005. The project goal summary must include the following:

(i) the name of the entity that will be the potential project partner and the name, mailing address, email address, facsimile number, and telephone number of the person who will represent the potential project partner and be the primary point of contact with the Land Office;

(ii) the location and geographic scope of the erosion problem;

(iii) a description of the erosion problem and the severity of erosion in the area;

(iv) a description of how the project will lessen the negative economic impacts of the erosion problem;

(v) a description of how the project will benefit the public and private infrastructure, resources, and property that have been impacted or threatened by erosion;

(vi) the natural resource impacts of erosion in the area;

(vii) the estimated cost to complete the erosion response project;

(viii) whether the project will incorporate the beneficial use of dredged materials;

(ix) potential public and private cosponsors and sources of funding with an estimated percentage of the project to be funded with funds from a source other than the Account;

(x) whether the potential partner can make a binding funding commitment to meet the required percentage of the shared project cost;

(xi) a description of an emergency erosion situation the project is intended to address, if any;

(xii) the desired outcome or goals of the project for which funding is sought from the Account;

(xiii) a description of the type of project for which funding is sought from the Account, including an identification of the project as:

(I) a beach nourishment project on a public beach or bay shore with a 25 % cost-sharing requirement;

(II) a marsh restoration project with a 40% cost-sharing requirement;

(II) a bay shoreline protection project other than beach nourishment with a 40% cost-sharing requirement;

(IV) any other coastal erosion response study or project with a 40% cost-sharing requirement; or

(V) a project for which funding is sought from the Account is a large-scale project without a shared project cost requirement in accordance with Texas Natural Resources Code, §33.603(f);

(xiv) whether a sand source has been identified by the potential project partner for a beach nourishment project ; and

(xv) whether the potential partner seeks to manage the project or requests that the Land Office manage the project.

(B) The Land Office will accept project goal summaries by:

(i) mail sent to the General Land Office, Attn: Director, Coastal Resources Program Area, Coastal Stewardship Division, P. O. Box 12873, Austin, TX 78711-2873;

(ii) fax sent to (512) 475-0680; or

(iii) email sent to coastalprojects@glo.state.tx.us.

(C) The Land Office will evaluate project goal summaries received based on the following criteria:

(i) the feasibility and cost-effectiveness of the proposed project;

(ii) the economic impacts of erosion in the area of the proposed project;

(iii) the effect of the proposed project on public infrastructure or resources threatened by erosion;

(iv) the effect of the proposed project on natural resources threatened by erosion;

(v) the effect of the proposed project on private property threatened by erosion;

(vi) if the project is located within the jurisdiction of a local government that administers a beach/dune program, whether the local government is adequately administering its duties under the Open Beaches Act (Texas Natural Resources Code, Chapter 61) and the Dune Protection Act (Texas Natural Resources Code, Chapter 63);

(vii) whether the project will provide for beneficial use of beach-quality sand dredged in constructing and maintaining navigation inlets and channels of the state; and

(viii) whether funding can be leveraged with sources other than the Account; and

(ix) whether the potential project partner has already made or received a binding commitment to fund all or a portion of a given project.

(D) After evaluation of proposed projects according to the criteria detailed in subparagraph (C) of this paragraph, the Land Office will further evaluate project goal summaries received based on the following priority criteria:

(i) the relative severity of erosion in each area;

(ii) whether the proposed project will address an emergency erosion situation in the area;

(iii) the needs in other critical coastal erosion areas;

(iv) whether federal and local governmental financial participation in the project is maximized;

(v) whether financial participation by private beneficiaries of the project is maximized;

(vi) whether the project achieves efficiencies and economies of scale;

(vii) whether funding the proposed project will contribute to balance in the geographic distribution of benefits for coastal erosion response projects in Texas that are proposed or have received funding from the Account;

(viii) the economic benefits to the state relative to the cost to the state of the project; and

(ix) the cost of the proposed project in relation to the amount of money available in the Account.

(E) The Land Office will conduct the initial evaluation in consultation and coordination with the potential project partner, as deemed necessary by the Land Office. Based on the initial evaluation, the Land Office will designate proposed projects as either priority projects or alternate projects.

(i) If, as a result of the initial evaluation, the Land Office designates a potential project as an alternate project, the potential project partner will be notified in writing. The Land Office will retain the project goal summary and may reevaluate it if future conditions warrant funding the project in the current state fiscal biennium. The project goal summary must be resubmitted by the potential project partner for consideration for funding in a subsequent state fiscal biennium.

(ii) If the Land Office's initial evaluation results in a designation of a proposed project as a priority project, the Land Office

will invite the potential project partner to continue to work cooperatively with the Land Office by becoming a qualified project partner.

(2) Evaluation of preferred alternatives with qualified project partners for priority projects.

(A) The Land Office and potential project partner for a priority project must enter into a project cooperation agreement to continue the evaluation process. Upon entering into a project cooperation agreement, the potential project partner will become a qualified project partner. The Land Office and qualified project partner will cooperatively evaluate alternatives for addressing the erosion problem(s) identified in the project goal summary of a priority project.

(B) The project cooperation agreement with the qualified project partner will explicitly define the activities to be undertaken by the Land Office and the qualified project partner in the evaluation of alternatives. Funds from a source other than the Account expended by a qualified project partner in conformance with the project cooperation agreement can be used to offset the qualified project partner's cost-sharing requirement. The Land Office may, at its sole discretion, fund studies or activities that are part of the alternatives-evaluation process.

(C) During the alternatives-evaluation process, the Land Office will evaluate projects based on the following criteria:

(i) the feasibility and cost-effectiveness of preferred alternative projects in meeting the goals of the project goal summary; and

(ii) whether the qualified project partner has already made or received a binding commitment to fund all or a portion of a given project.

(D) The Land Office will determine whether a qualified project partner should receive funds from the Account based on the final prioritization of preferred alternatives according to the considerations detailed in subparagraph (C) of this paragraph.

(E) Each state fiscal biennium the Land Office may determine that a large-scale beach nourishment project on a public beach designated as a priority project will be undertaken by the Land Office without requiring a qualified project partner to pay a portion of the shared project cost as provided in Texas Natural Resources Code, §33.603(f). In addition to the considerations detailed in subparagraph (C) and (D) of this paragraph, the Land Office may consider the following factors in determining whether to fund a large-scale project without a cost share requirement:

(i) whether the total cost of the project exceeds one-third of the total amount appropriated to the Land Office for coastal erosion and response for the state fiscal biennium in which funding is sought;

(ii) whether a sand source for the project has been identified by the qualified project partner in the project goal summary;

(iii) the relative amount of funding available to the qualified project partner from sources other than the Account; and

(iv) the potential impact of the project on coastal erosion in relation to the total estimated cost of the project.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308066
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
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Proposal publication date: October 17, 2003
For further information, please call: (512) 305-9129

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PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 55. LAW ENFORCEMENT

SUBCHAPTER D. OPERATION GAME THIEF FUND

31 TAC §55.116

The Operation Game Thief Committee adopts an amendment to §55.116, concerning Death Benefits: Payment, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8300).

In 1981, the Texas Legislature authorized and created the Operation Game Thief Fund and the Operation Game Thief Committee. In 1993, the Texas Legislature added §12.206 to the Texas Parks and Wildlife Code to authorize the use of Operation Game Thief funds to "supplement any death benefits received by the families of peace officers employed by the department who are killed in the line of duty." In 1994, the Operation Game Thief Committee established a $10,000 death benefit. As a result of decreasing dollar valuation, increasing burial costs, and the importance of being able to quickly provide adequate funds to survivors of department peace officers who are killed in the line of duty, the Operation Game Thief Committee determined that the death benefit should be raised to $25,000. The Operation Game Thief Committee also was also determined that the death benefit could be increased without adversely affecting the Operation Game Thief program.

The rule will function by increasing the death benefit for eligible recipients from $10,000 to $25,000.

The department received one comment supporting adoption of the proposed rule.

The amendment is adopted under Parks and Wildlife Code, §12.201, which requires the Operation Game Thief Committee to adopt rules for the implementation of the operation game thief program and maintenance of the operation game thief fund, and §12.206, which authorizes the committee to use the operation game thief fund to supplement any death benefits received by the families of peace officers employed by the department who are killed in the line of duty.

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

Filed with the Office of the Secretary of State on November 19, 2003.

TRD-200307994

Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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Proposal publication date: September 26, 2003
For further information, please call: (512) 389-4775

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CHAPTER 65. WILDLIFE
SUBCHAPTER A. STATEWIDE HUNTING AND FISHING PROCLAMATION
DIVISION 2. OPEN SEASONS AND BAG LIMITS--HUNTING PROVISIONS

31 TAC §65.42, §65.60

The Texas Parks and Wildlife Commission adopts amendments to §65.42, concerning Deer, and §65.60, concerning Pheasant: Open Seasons, Bag, and Possession Limits, without changes to the proposed text as published in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8301).

The amendment to §65.42 would correct an error in subsection (b)(8) by restoring three subparagraphs that were not published as part of a previous rulemaking. The paragraphs in question set the closing date, bag limits, and permit requirements for the archery-only deer season. The rule is necessary in order to provide a closing date for the archery-only deer season and to prevent the take of deer by archery during times of the year when the season is ordinarily closed. The amendment to §65.60 establishes a pheasant season in the Panhandle to run from December 13 through January 11. The amendment is necessary to prevent possible hunter and landowner confusion stemming from a publication error in widely disseminated department literature. The easiest solution is to make the season dates in the rule consistent with the season dates that have been distributed to the public.

The amendment to §65.42 will function by establishing a closing date for the archery-only deer season. The amendment to §65.60 will function by establishing an open season for pheasant in several Panhandle counties running from December 13 to January 11.

The department received no comment concerning adoption of the proposed rules.

The amendments are adopted under Parks and Wildlife Code, §61.052, which requires the commission to regulate the means, methods, and places in which it is lawful to hunt, take, or possess game animals, game birds, or aquatic animal life in or from the places covered by the chapter.

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

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Gene McCarty
Chief of Staff
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Proposal publication date: September 26, 2003
For further information, please call: (512) 389-4775

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

The Texas Water Development Board (the board) adopts amendments to 31 TAC §§363.1, 363.2, 363.33, 363.801, and 363.904 concerning Financial Assistance Programs without changes to the proposed text as published in the October 3, 2003 issue of the *Texas Register* (28 TexReg 8569) and will not be republished. The amendments are adopted for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The amendments to §363.1, Scope of Subchapter, and §363.2, Definitions of Terms, affirm that the introductory provisions of Chapter 363 also apply to financial assistance under the Pilot Program for Water and Wastewater Loans to Rural Communities (Chapter 363, Subchapter I) and assistance under the water financial assistance bond program (Development Fund II, Texas Water Code Chapter 17, Subchapter L). Amendments to §§363.1, 363.2 and 363.801, Scope of Subchapter (H), provide an appropriate reference to the statutory authority for the Groundwater District Loan Program.

The board adopts amendment to §363.904, Financial Assistance, to remove language that caps funding at $250,000 for a project funded out of the Pilot Program for Water and Wastewater Loans to Rural Communities. This amendment is adopted to implement recent changes to Texas Water Code §17.904 by the 78th Legislature.

The board adopts amendments to §363.33, Interest Rates for Loans and Purchase of Board's Interest in State Participation Project, specifically subsection (c) concerning the Clean Water State Revolving Fund (CWSRF). The amendments will eliminate the existing language in subsection (c) in its whole and replace it with new language which provides the methodology for setting interest rates for all loans under the CWSRF. The changes include the method for determining the interest rates charged for loans when the annual debt service payments are not level through the term of the bonds.

The amendments to §363.33(c) include paragraph (1) that provides definitions for terms commonly used in the subsection. The term "average life" is included as a necessary component of the methodology used to calculate the loan interest rate to be set by the executive administrator in this section. The average life is defined as the number that results from dividing the sum of the payment periods of all maturities of a loan by the principal amount of the loan. The term "borrower" is used to refer to eligible applicants that have received a commitment for financial assistance from the CWSRF. The term "Delphis" is defined as the Delphis Hanover Corporation Range of Yield Curve Scales in order to identify the source of information that the board will use to identify the market cost of funds to a borrower. The board will

use the Delphis because it is a standard recognized in the financial services industry for determining the market cost of funds. The term "loan interest rate" is used to identify the rate of interest that the board will charge a borrower for a loan from the CWSRF. Since financial assistance is provided by the purchase of a series of bonds or a loan agreement that identifies specific amounts to be repaid on specific dates, loan interest rate is defined as the series of interest rates that the board will charge for each bond in the borrower's bond series or for each principal payment in the loan agreement. The term "market rate" is defined since the loan interest rate will be determined in relation to the borrower's cost to acquire funds on the open market, which is determined by reference to the Delphis. The term "payment period" is included as a necessary component in determining the average life. It is the number that is determined by multiplying the maturity principal amount of each bond in the series or each maturity in the loan agreement by the standard period for such loan. The term "standard period" is defined because it is a necessary component in the calculation of average life. It is the number of days between the delivery of funds from the board to the borrower and the maturity date of a principal payment, calculated on the basis of a 360-day year composed of twelve 30-day periods, divided by 360.

The new language in §363.33(c)(2) establishes a timeline for setting fixed interest rates for loans out of the CWSRF and the procedure for extending a set interest rate prior to the closing of a loan.

The new language in §363.33(c)(3) sets out the method by which fixed interest rates for loans out of the CWSRF are set among different classes of borrowers. New §363.33(c)(3)(A) is included to clearly delineate the method of identifying the market rate for the various categories of borrowers. Subparagraph (3)(B) is intended to delineate that the purpose of the program is to provide interest rate reductions for each of two classes of borrowers and the circumstances that create each class. Additionally, a provision is included in this provision to make explicit the current practice of the board that regardless of the amount of the reduction from the market rate, the loan interest rate cannot be less than zero. This restriction is necessary in order to minimize the board's program costs.

New §363.33(c)(3)(C) identifies two methodologies for setting the loan interest rate. New clause (3)(C)(i) assumes that this method will be applied unless the borrower requests otherwise. Under this subparagraph, the method for determining the interest rate as currently applied by the board is identified. This subparagraph now accommodates the need of the board to insure level annual debt service payments even if doing so requires that the interest rate subsidy to be modestly adjusted from the full subsidy anticipated for the borrower. Under this process, the executive administrator determines the average life, as defined, and applies the subsidy to the market rate for the maturity for the year before the year in which the average bond life is reached. If the resulting debt service schedule is level to the satisfaction of the executive administrator, the loan interest rate will have been determined. However, if the resulting debt service schedule is not level to the satisfaction of the executive administrator, this subparagraph then specifically authorizes the executive administrator to adjust the interest rate in any of the maturities in order to insure that the bond repayment schedule is level. This amendment, as well as the amendments in (3)(C)(ii) acknowledges the authority of the executive administrator to determine whether the borrower's proposed debt service schedule is level. The financial services industry recognizes that annual debt service payments need not be exactly equal in order to be considered level. If the annual debt service schedule is not level, the cash flow necessary for the board to repay its obligations under the program may be impaired. Additionally, an un-level debt service structure may cause the amount of the subsidy that would be provided from the CWSRF to increase and potentially compromise the integrity of the fund. However, the degree to which the debt service payments may not be equal yet still remain sufficiently level for the purposes of funds management is a matter of judgement that should reside in the executive administrator. Therefore, in these amendments the determination of whether the debt service payment schedule is level is explicitly assigned to the executive administrator.

New clause (3)(C)(ii) identifies the method for determining an interest rate for a borrower that requests principal maturity schedule that does not have level annual debt service payments. It provides that the executive administrator determines the amount of the subsidy that the borrower would have had from a level debt service structure following the procedure identified in clause (3)(C)(i) and using the interest rate reduction identified in subparagraph (3)(B). The executive administrator then determines the loan interest rate for the debt service schedule requested by the borrower in the manner that as closely as possible provides the same amount of subsidy that would have been provided had the debt service payments been level.

The new §363.33(c)(4) sets out the method for calculating interest for variable rate CWSRF loans and the procedure to convert an outstanding variable rate loans to a long-term fixed rate loan.

The new §363.33(c)(5) allows the executive administrator to adjust a borrower's interest rate prior to closing as a result of a change in the borrower's credit rating.

There were no comments received on the proposed amendments.

SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.1, §363.2

Statutory authority: Water Code, §6.101, §15.603, §15.909, and §36.372.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J and O; Chapter 17 Subchapters D, E, and L; and Chapter 36 Subchapters L.

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

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TRD-200307962
Suzanne Schwartz
General Counsel
Texas Water Development Board
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For further information, please call: (512) 475-2052

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DIVISION 3. FORMAL ACTION BY THE BOARD

31 TAC §363.33

Statutory authority: Water Code, §6.101, §15.603, §15.909, and §36.372.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J and O; Chapter 17 Subchapters D, E, and L; and Chapter 36 Subchapters L.

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SUBCHAPTER H. GROUNDWATER DISTRICT LOAN PROGRAM

31 TAC §363.801

Statutory authority: Water Code, §6.101, §15.603, §15.909, and §36.372.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J and O; Chapter 17 Subchapters D, E, and L; and Chapter 36 Subchapters L.

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SUBCHAPTER I. PILOT PROGRAM FOR WATER AND WASTEWATER LOANS TO RURAL COMMUNITIES

DIVISION 1. INTRODUCTORY PROVISIONS

31 TAC §363.904

Statutory authority: Water Code, §6.101, §15.603, §15.909, and §36.372.

Cross-reference to statute: Water Code, Chapter 15, Subchapters J and O; Chapter 17 Subchapters D, E, and L; and Chapter 36 Subchapters L.

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

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CHAPTER 379. ADVISORY COMMITTEES

31 TAC §379.1, §379.3

The Texas Water Development Board (the board) adopts amendments to 31 TAC §379.1 and §379.3, concerning Advisory Committees without changes to the proposed text as published in the October 3, 2003 issue of the *Texas Register* (28 TexReg 8574) and will not be republished. The amendments are adopted to delete extraneous definitions and to extend the expiration date of an advisory committee. The amendments are adopted for cleanup and clarification as a result of the four-year rule review requirement of Texas Government Code §2001.039.

The board amends §379.1, subsections (2) and (4), which provide the definitions of "EDAP" and "TNRIS". These terms are not used in this chapter and therefore should be deleted. The board also amends §379.3, subsection (d), which currently identifies the date on which the Groundwater Availability Modeling Technical Advisory Group will automatically be abolished. The board amends the date for the abolition of this group to September 1, 2007 because the board had determined that the continued advice and input of this group beyond the current abolition date is reasonable and necessary. September 1, 2007, is selected as the new abolition date because it coincides with the next mandatory rule review for this rule.

No comments were received on the proposed amendments.

The amendments are adopted 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, and the Texas Government Code, §2110.005, which requires state agencies to adopt rules describing the advisory committees formed.

The statutory provisions affected by the amendments are Texas Water Code, §16.012.

Cross-reference to statute: Water Code, Chapter 16, Subchapter B.

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

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Suzanne Schwartz
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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 28. DNA DATABASE

SUBCHAPTER H. ACCREDITATION

37 TAC §§28.121 - 28.132

The Texas Department of Public Safety (DPS) adopts new §§28.121 - 28.132, concerning accreditation of crime laboratories and other entities, with changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6254) and will republish them.

As required by Government Code §2001.033(1), the director's reasoned justification for the rules is set out in this order. The order includes the preamble and the rules. The preamble contains a summary of the factual basis of the rule, a summary of comments received from interested parties, names of those groups and associations who commented and whether they were for or against adoption of the rules, and the reasons why the director disagrees with comments and proposals.

Changes made to the proposed rules are in response to public comment received in writing and at a public hearing held on October 3, 2003. Changes to the proposed text are found in §§28.121 - 28.132. Substantive changes are described in the summary of comments and responses section of this preamble. Other changes were made for clarification, consistency, or to correct typographical or grammatical errors.

The adopted rules are intended to address the requirements of House Bill 2703, 78th Regular Session, which added Government Code §411.0205. The new law provides that the director by rule shall establish an accreditation process for crime laboratories, including DNA laboratories, and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

Persons and groups who have provided comments against adoption of specific sections of the rules as proposed are the following: Dallas County Medical Examiner's Office; El Paso County; TLSI, Inc.; Austin Police Department; Travis County Medical Examiner's Office; Johnson County Medical Examiner's Office; Chief Medical Examiner's Office, El Paso; Rick Andrews; Irving Police Department; Arlington Police Department; Fort Worth Police Department; US Secret Service, Houston and Irving Field Offices; Tarrant County District Attorneys Office; Longview Police Department; Valley Baptist Medical Center; Travis County; Harris County Attorney; Brazoria Criminal District Attorney; Texas Conference of Urban Counties; Harris County Medical Examiner's Office Harris County Attorney; Harris County District Attorney; CISB Computer Forensics; State Auditor's Office; Galveston County Medical Examiner's Office.

Persons and groups who have provided comments in favor of adoption of specific sections of the rules as proposed are the following: North Texas Regional Computer Forensics Laboratory; Medical Examiner for Tarrant, Parker, Denson Counties; Dallas County Medical Examiner's Office; Dr. Randall Frost, Board Certified Pathologist; Dr. Vincent J. DiMaio, M.D., Bexar County Medical Examiner.

Some persons and groups have submitted comments that are in the nature of inquiries or statements about the proposed rules that do not specifically articulate a position for or against the proposed rules. Persons and associations that have submitted these comments are the following: Travis County Medical Examiner's Office; Texas Commission on Environmental Quality; A & B Labs; Orchid Cellmark; Arlington Police Department; City of Cedar Park; San Antonio Police Department; Houston Police Department; Baylor University; Armstrong Forensic Laboratory; Dallas County Medical Examiner's Office; Dallas County District Attorney; Texas Parks and Wildlife Department; State Representative Kevin Bailey; State Representative Dennis Bonnen; State Representative Terry Keel.

Director's Interpretation of House Bill 2703. House Bill 2703 ("HB 2703") directs the director to "establish an accreditation process for crime laboratories, including DNA laboratories, and other entities conducting forensic analysis for use in criminal proceedings." The new law also articulates a new rule of inadmissibility for certain kinds of evidence in criminal cases. Specifically, it amended Code of Criminal Procedure, Article 38.35, by adding new subsection (d) to identify a general rule: physical evidence subjected to a forensic analysis and any testimony about that physical evidence is admissible only if, at the time of the analysis, the crime laboratory or other entity conducting that analysis was either accredited by the department, or exempt from accreditation by rule. The new law also recognizes an exception from the general rule of inadmissibility for a certain period of time under new subsection (e). Evidence will continue to be admissible until September 1, 2005, provided that the crime laboratory or other entity preserves one or more separate samples of the physical evidence until all appeals are final.

What evidence is covered by the new rule of inadmissibility? In developing these rules, staff has taken the position that any physical evidence that is subject to forensic analysis by a crime laboratory or other entity is subject to the general rule of inadmissibility provided by statute. However, evidence that is not subject to forensic analysis is not subject to the rule. This interpretation is based on the clear language of Article 38.35(b).

What is covered by the legal definition of "other entity"? The director received a number of comments regarding the applicability of the law to types of entities that conduct criminal forensic analysis but that are not traditionally considered to be crime laboratories. Do they constitute "other entities" as provided under the new law? Are they subject to accreditation or exemption?

Staff interprets the plain language of Article 38.35 to provide that any entity that conducts forensic analysis of evidence for use in

criminal proceedings should be accredited or exempted by DPS in order to avoid the application of the rule of inadmissibility under Article 38.35. A number of comments have been received that disagree with this interpretation. For example, a number of comments were received that asserted that a medical examiner does not constitute an "other entity" under the law. These comments are summarized in greater detail below. However, the director disagrees with these comments based on the plain language of Article 38.35. The position of the staff is that if a medical examiner, or any other entity, is conducting forensic analysis, then HB 2703 is applicable. However, the discipline of forensic pathology, although covered by HB 2703, has been determined in the final rule to be exempt from accreditation. The reasons for this determination are explained in this preamble.

A second example of concern about what constitutes an "other entity" under the new law is illustrated by comments from police departments asking whether evidence collection and analysis during crime scene searches would constitute covered activity. Would a police department crime scene search team be an "other entity?" The response to this question is that, in some circumstances, a police department could be an "other entity" under the new law, but to be covered by the new law, the entity must not only be an "other entity", but it must also be conducting "forensic analysis" as provided under Article 38.35(a)(1). The activity must be a "medical, chemical, toxicologic, ballistic or other expert examination or test performed on physical evidence." The director's position is that typical crime scene search activities by law enforcement personnel do not constitute an expert forensic examination as provided under the statute. Therefore, police department crime scene search teams would not be appropriate for accreditation. However, if the crime scene search team is conducting expert forensic examinations, it would be subject to accreditation for that type of analysis. In other words, the key issue in evaluating whether an entity should be accredited is the nature of the testing, rather than the technical description of the entity or the physical location of examination.

During the comment period, staff identified three specific categories or disciplines of forensic analysis for which formal and informal comments have advocated for exemption. In the adopted rules, the department determined that some form of exemption is appropriate in each of the following categories: forensic pathology, digital evidence, and environmental testing.

A common concern about potential DPS accreditation for each of these disciplines is that accreditation is unavailable or inappropriate. Key concerns supporting this conclusion included: 1) lack of legislative intent for accreditation of the particular discipline, 2) ambiguity as to costs for local government compliance, 3) general inability to comply with accreditation standards, 4) lack of proven track records for accreditation of certain disciplines, 5) unavailability of multiple accreditation bodies, 6) inadequate experience or expertise of DPS to make accreditation decisions in the particular scientific discipline, 7) the discipline is considered a crime laboratory function only because of the breadth of HB 2703, and 8) the science involved in the category is not amenable to precisely the same form of oversight chosen by the legislature to ensure quality in a crime laboratory.

1. Is there a demonstrable legislative intent to regulate the particular discipline? A common element in each of the three categories is a perceived lack of legislative intent to include that category within the ambit of HB 2703. None of the three would normally be thought of as routinely being performed in a crime laboratory. The only reason for proper consideration and inclusion in the accreditation rule is that each discipline is an "other entity" conducting "forensic analysis" in some form or another under the plain language of HB 2703. After reviewing the legislative record and communications from various sponsors, the absence of clear legislative intent is perceived equally by commenters and DPS staff. However, it is clear that the legislative intent was that the rules should not create a significant fiscal impact on local government.

2. Are the costs of compliance readily determinable or ambiguous? DPS research is inconclusive on how to quantify the probable costs borne by local communities, or even the measures to be used to do so if accreditation is required. For example, some comments estimate compliance costs for medical examiner offices to be in the millions of dollars; others, in thousands. Comments by experts in the disciplines reflect disagreement regarding the technical requirements of accreditation.

3. Are local agencies able to comply with accreditation standards? DPS research is inconclusive on the ability or appropriateness for all federal, state, local, and private entities to comply with the recognized accreditation standards in each category or discipline. However, it is clear that the legislative intent was that the rules should not create a significant fiscal impact on local government.

4. Do the proposed accrediting bodies have a proven track record for accreditation of these categories or disciplines, a record that is commonly recognized and accepted by the relevant scientific community? The National Association of Medical Examiners ("NAME") is the only identified accrediting body for medical examiners. However, the accrediting body has accredited only a few dozen offices. In the discipline of digital evidence, the American Society of Crime Laboratory Directors, Laboratory Accreditation Board ("ASCLD/LAB"), the only accrediting body, has offered accreditation for only a few months. In the discipline of environmental testing, the only potential accrediting body identified by staff, Texas Commission on Environmental Quality (TCEQ), has yet to complete developing its own accreditation process.

5. Are there multiple accreditation bodies available in the category or discipline? In general, DPS research has revealed, at most, only one potential accrediting body in each category or discipline. In the face of internal criticism within the discipline, this renders less appropriate any mandate to comply with the criticized accrediting body.

6. Does DPS have adequate experience or expertise to make regulatory decisions in the particular category or discipline? DPS staff acknowledges limited experience or expertise for some of these categories or disciplines. Staff realizes that regulatory decisions in the accreditation process for these categories would therefore be difficult to defend.

7. Is the category or discipline a crime laboratory function? It is undisputed that these three categories were not originally contemplated as meeting the definition of "crime laboratory" during the legislative process that created HB 2703.

8. Is the science involved in the particular category or discipline amenable to the form of regulation chosen by the legislature to ensure quality in a crime laboratory? Even if available, it seems inappropriate to mandate accreditation of the three categories by the same types of outside accrediting bodies well known in the fields of crime laboratories. For example, forensic pathology is the practice of medicine, perhaps conducted in a hospital setting.

Both medicine and hospitals are already regulated by two other state agencies: the Texas State Board of Medical Examiners and the Texas Department of Health. Digital evidence involves relatively novel analytical techniques for which there are only recent standards available upon which to base accreditation. Environmental testing uses different analytical standards and procedures governed by yet another sister agency: the Texas Commission on Environmental Quality.

For all these reasons staff believes that outside accreditation is either unavailable or, if available, inappropriate in all three categories. The evidence in all three categories is routinely admissible under the Texas Rules of Evidence. The evidence is examined or tested outside what is commonly understood to be a "crime laboratory" by persons not employed by what is commonly understood to be a "crime laboratory." Therefore, exemption is appropriate for all three categories: forensic pathology (including medical examiners), digital evidence, and environmental testing.

It should be pointed out that, within the category of forensic pathology, some comments request that DPS also exempt a toxicology or other laboratory used in conjunction with an autopsy. This is suggested because some public and private pathologists use a hospital laboratory to perform toxicology tests and those hospitals are subject to other state and professional oversight. Staff disagrees with the proposal and has determined that only the medical practice of forensic pathology is exempt, but not associated laboratory work. As ambiguous as legislative intent is on whether to exempt medical examiners and the discipline of forensic pathology, legislative intent is very clear that a toxicology laboratory associated with a medical examiner's office should not be exempt. Staff has clarified this issue in the definition of "forensic pathology" and in the responses to comments.

Finally, DPS staff believes that it is important to note that the exemptions for forensic pathology, digital evidence, and environmental testing will be reconsidered in the future.

The following is a section by section discussion of the new adopted sections, changes in text, and comments regarding the new sections as proposed.

§28.121. Purpose. This section sets out the objective of the new sections. The sections establish an accreditation process for crime laboratories or other entities that conduct forensic analysis of physical evidence for use in a criminal proceeding. The rule as finally adopted revised subsection (a) to better explain the general purpose, and adds new subsections (b) and (c) to explain the sequence of accreditation and evidentiary predicate of accreditation under law.

New subsection (d) and (e) provide an explanation of "voluntary" and "statutory" accreditation. This was moved from another location in the proposed rule text. This distinction is made because a laboratory may apply for "statutory DPS accreditation" and/or "voluntary DPS accreditation" in certain circumstances. Statutory accreditation is necessary if a laboratory engages in a forensic discipline that is accredited by a DPS recognized accrediting body. For example, the firearm/toolmark discipline requires accreditation or sample preservation as a condition for admissibility. It is subject to statutory DPS accreditation. However, although accreditation is available for latent print examination, it is not required as a condition for admissibility since the discipline is statutorily excluded from the definition of "forensic analysis." A laboratory may apply for voluntary DPS accreditation in the case of latent prints. The disciplines and subdisciplines that are eligible for either statutory or voluntary accreditation are listed in §28.124 and §28.125.

§28.122. Definitions. This section provides the common definitions for terms used in the rules. The section has been modified and renumbered in response to comments and inquiries.

Revised paragraph (1) contains new text to define "environmental testing" in a manner that is consistent with recommendations of the Texas Commission on Environmental Quality ("TCEQ").

Revised paragraph (2), "forensic analysis" is identified as having the same meaning as that used in Article 38.35. Further statement of what is not included in the definition is also provided to clarify that certain activities are specifically excluded from the definition. Expert examinations for latent print examination and breath test specimen testing under Transportation Code, Chapter 724, are excluded by statute. Expert examinations that are not conducted for the purpose of determining the connection of physical evidence to a criminal action are excluded based on DPS staff interpretation that they are not covered by the definition of "forensic analysis" in Article 38.35. For the same reasons, activities to locate, identify, collect and preserve evidence are not "forensic analysis" under Article 38.35. The definition of forensic analysis has been modified from the rule as originally proposed to clarify this interpretation. Comments regarding the definition of "forensic analysis" and the responses to those comments are provided under the discussion of §28.124.

Revised paragraph (3) provides a new definition of "forensic pathology" that has been added to clarify that the term includes a medical examiner but does not include a toxicology laboratory or other laboratory associated with the office of a medical examiner. This clarification was made by DPS staff through legislative resources after DPS received inquiries for clarification that reflected ambiguity in the scope of the term as used in the rules. This change was made to help clarify that a toxicology laboratory conducting forensic analysis will not be exempt from accreditation even if associated with a forensic pathology practice that is exempt under these rules. Further discussion of this issue is contained in other parts of this preamble.

Revised paragraph (4) provides a definition of a "recognized accrediting body." Staff has modified the proposed rule to more closely conform to HB 2703 and explain the interpreted distinction between certification and accreditation. Staff has received comments inquiring whether DPS accreditation should include accreditation by professional certification organizations rather than solely independent accrediting bodies. Staff's position is that in many cases professional certification is not equivalent to accreditation. Certification often focuses on individual qualifications. The staff position is that a recognized accrediting body may be a certification board but will have to do more than review individual personnel qualifications. To be recognized by the director, the accrediting body or certification board should review an entity's personnel, procedures, and facilities. Further discussion of this issue is provided under §28.123. Comments regarding this issue and the responses to those comments are provided under §28.124.

Revised paragraph (5) provides a definition for "laboratory or crime laboratory." The term is defined broadly to include any entity that conducts forensic analysis of physical evidence for use in a criminal proceeding. Additional discussion of this interpretation is contained in other parts of this preamble.

Revised paragraph (6) provides that "physical evidence" is defined to have the same meaning as Code of Criminal Procedure, Article 38.35. It is a tangible object, thing, or substance related to a criminal offense.

§28.123. Recognition Process; List of Recognized Accrediting Bodies. The section head was changed from "Approved National Accrediting Bodies" in the proposed rule to the current language in order to more clearly identify the purpose of the section.

Subsection (a) was changed to move text relating to "voluntary" and "statutory" accreditation to §28.121, a more logical section. New subsection (a) is added in the final rule to explain the internal process used by the director in determining whether an accrediting body will be "recognized" by the director. This explanation is based on the definition of accrediting body that was contained in the initial proposed rule and language in this section as initially proposed. The revision was made in response to inquiries for clarification that reflected ambiguity in the rule as initially proposed.

Revised subsection (b) sets out the current DPS recognized accrediting bodies and the stated discipline or subdiscipline limitations. Under this rule as finally adopted, DPS recognizes American Board of Forensic Toxicology ("ABFT") for the discipline of toxicology only; the American Society of Crime Laboratory Directors, Laboratory Accreditation Board ("ASCLD/LAB") for all disciplines except digital evidence and crime scene search team at this time; and National Forensic Science Technology Center ("NFSTC") for accreditation of biology only (including the subdiscipline of DNA), but excluding other disciplines at this time. Revised subsection (b) as adopted also was changed to exclude accreditation by the National Association of Medical Examiners ("NAME"). This change was based on comments received. The basis for this change is detailed in other parts of this preamble and in comment and responses to comments under §28.124, below.

§28.124. Disciplines and Subdisciplines Subject to DPS Accreditation. This section identifies disciplines for which accreditation is available and for which a laboratory may apply for accreditation. The section has been reorganized to describe disciplines and subdiscipline limitations, and to accommodate other disciplines and subdisciplines that may be recognized by the director. Subsection (e) is added to explain the DPS interpretation of the term "only" as a term of limitation for subdisciplines.

Staff received significant comment regarding this section. Specific interest related to two categories of proposed accreditation--forensic pathology and digital evidence. These disciplines are exempt under the rules as finally adopted. Comments are detailed below.

Forensic Pathology

Comments were received from a number of entities regarding the applicability of DPS accreditation to forensic pathology. Based on the comments and staff research, staff concluded that forensic pathology should at this time be exempt by rule from accreditation under the statutory exemption authority provided by Government Code §411.0205(c). The basis for this determination is explained in other parts of this preamble. Comments regarding forensic pathology are summarized below.

COMMENT: Some comments assert that accreditation of forensic pathology medical examiners would be an unauthorized override of Chapter 49 of the Code of Criminal Procedure. Additionally some comments assert that staff's reading of the statute is unnecessarily broad. The comments assert that HB 2703 can be read so that medical examiners and pathologists performing forensic examinations are not covered by the statute.

RESPONSE: Staff disagrees with these interpretations. Staff believes that accreditation under HB 2703 can be reasonably harmonized with provisions establishing medical examiner duties and responsibilities under Code of Criminal Procedure Chapter 49. However, because staff concurs with other comments that forensic pathology can be exempt, further consideration of that issue is unnecessary.

COMMENT: Some comments assert that the legislature did not intend for HB 2703 to apply to medical examiners and autopsies. The comments assert that this position is confirmed by the bill analysis written by the legislative committees and the LBB, which was provided to the legislature. For example, a comment asserts that "nowhere does any fiscal note nor bill analysis state that the bill would require the accreditation of forensic pathologist or Medical Examiners." Additionally, comments assert that the legislative fiscal note says that no significant fiscal implication to units of local government is anticipated and that this means that the legislature did not contemplate accreditation of forensic pathology since accreditation would in fact significantly impact local governments.

RESPONSE: Staff concurs in part with these submissions for the reasons stated in other parts of this preamble. In addition, staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments assert that counties will incur increased costs, will not be able to use justice of the peace or private unaccredited forensic pathologists and then will be inclined to not order autopsies. The comments assert that this will cause numerous criminal cases to be unsolved. Also, the comments assert that small counties will incur increased cost of transportation of bodies to accredited facilities, cost of autopsies will increase, and fees and expenses involved in transporting pathologists to the particular regions for testimony will increase.

RESPONSE: Staff concurs in part with this submission and has revised the rule to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments assert that exemption of forensic pathology is appropriate because DPS accreditation would be an improper attempt to regulate the practice of medicine.

RESPONSE: Staff agrees that exemption is appropriate but only for the reasons as stated in this preamble. Further evaluation of this comment is moot because staff revised the adopted sections to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments note that other states have established separate agencies to establish state standards for forensic pathology and suggest that accreditation should be provided for by an entity other than DPS.

RESPONSE: Staff recognizes that other states have varying practices and that additional research regarding accreditation

practices in other states would be beneficial. However, further evaluation of this comment is moot because staff revised the adopted sections to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments assert that the NAME is a voluntary peer organization and that requiring accreditation improperly converts the NAME into a governing body.

RESPONSE: Staff disagrees with this submission. Staff believes that the accreditation system contemplated by HB 2703 provides for DPS accreditation through recognized independent accrediting bodies and that accreditation is appropriate unless an exemption applies. In this case, staff has revised the adopted sections to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments assert that medical examiners are not crime laboratories and do not "test" evidence and therefore do not fall within the scope of HB 2703.

RESPONSE: Staff disagrees with this submission and believes that the examination conducted by a forensic pathologist constitutes forensic analysis under Article 38.35. However, staff believes that exemption of the discipline of forensic pathology is appropriate at this time for the reasons detailed in other parts of this preamble.

COMMENT: Some comments, including submissions by state representatives, assert that exemption is appropriate because it was not the legislative intent of HB 2703 to impose accreditation on the medical examination of bodies or body parts done as part of an autopsy.

RESPONSE: Staff agrees with these submissions for the reasons as stated in other parts of this preamble. Further evaluation of this comment is moot because staff revised the adopted sections to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments assert that DPS accreditation is inappropriate because it would constitute oversight of a medical examiner office by a law enforcement agency. Comments assert that such oversight would compromise the scientific neutrality that is essential for expert opinion by a medical examiner.

RESPONSE: Staff believes that these comments are beyond the scope of DPS rulemaking activity under HB 2703. However, staff is confident that the DPS accreditation process would not unduly interfere with the scientific neutrality of a forensic pathologist or any other discipline.

COMMENT: Some comments assert that NAME accreditation is not feasible for many medical examiners' offices.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time.

COMMENT: Some comments assert that NAME standards are onerous and the DPS staff statement in the preamble of the proposed rules as to the cost of accreditation for medical examiners is incorrect. Some assert that the NAME checklist requires extensive standards for facilities and personnel. Comments assert that NAME has a limit of annual autopsies per pathologist per year as a requirement for accreditation and that this limitation is a significant problem for medical examiner offices which conduct a greater number of autopsies than the approved NAME limit. Comments assert that it is not presently feasible to reduce the number of autopsies or increase the staffing of medical examiner offices due to the shortage of availability of forensic pathologists. Comments assert that if accreditation were to be required for medical examiners, considerable time would be necessary to meet the accreditation requirements. These comments generally assert that forensic pathology should be exempt or excluded from the DPS rules.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and recognize the discipline as exempt from accreditation. Further evaluation of this comment is moot.

COMMENT: Some comments assert that a cheaper alternative to forensic pathology accreditation is to verify licensure and board status of a medical examiner. These comments generally assert that certification should be sufficient for accreditation or exemption purposes because forensic pathologists are licensed physicians and are continually peer-reviewed. A number of comments assert that, because many forensic pathologists use hospital facilities that hold accreditation, no other accreditation should be necessary than the hospital accreditation. Some comments assert that many forensic autopsies are conducted in hospital settings that are certified by the College of American Pathologists and that such a certification should be accepted by DPS as sufficient for accreditation purposes. Some comments assert that forensic pathologists are already regulated by the Texas State Board of Medical Examiners and that state licensing is sufficient.

RESPONSE: Staff intends to research at a later date the issue of whether certification or other state licensing should be accepted for DPS accreditation purposes. However, further evaluation is moot because staff has revised the adopted sections to delete forensic pathology from the status of an accredited discipline and instead exempt it from accreditation at this time.

COMMENT: Some comments inquire whether a toxicology laboratory associated with a forensic pathologist would be subject to exemption or accreditation by the DPS. Comments in favor of exemption assert that such laboratories are already subject to oversight through the Clinical Laboratory Improvement Act ("CLIA") and the College of American Pathologists ("CAP").

RESPONSE: Although forensic pathology is exempt from accreditation, a toxicology laboratory conducting forensic analysis is not exempt from accreditation. Staff interprets forensic toxicology to be specifically covered by HB 2703. Additional discussion of this is provided under §28.122, §28.126, and other parts of this preamble.

COMMENT: Some comments assert that a medical examiner's analysis is subject to intense scrutiny at trial under the rules of evidence. Comments assert that, because a prosecutor must establish forensic pathology expertise and show that sample collection techniques were proper, HB 2703 should either be considered as inapplicable or the practice of forensic pathology should be determined to be exempt.

RESPONSE: Staff agrees that forensic pathology is subject to rigorous scrutiny, as is every other forensic discipline under the Texas Rules of Evidence. However, further evaluation of this comment is moot because staff revised the adopted sections to delete forensic pathology from the status of an accredited discipline and exempt it from accreditation at this time.

COMMENT: A number of comments assert that each element of exemption under HB 2703 can be demonstrated to apply to the discipline of forensic pathology, and that DPS therefore should exempt the discipline.

RESPONSE: Staff agrees with this submission for the reasons stated in other parts of this preamble.

COMMENT: Some comments assert that the staff interpretation of applicability of accreditation to forensic pathology creates an unfunded mandate to local government and will strain local resources to an unacceptable degree.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and recognize the discipline as exempt from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments in favor of accreditation of forensic pathology assert that the NAME standards identify the minimum acceptable criteria for the practice of forensic pathology and are not onerous for local government. These comments assert that the inspection criteria are highly flexible and adaptable to many different practice types. At least one comment has asserted that only 5 to 10 additional positions statewide would be necessary to provide sufficient professional manpower for statewide accreditation. Additionally, comments assert that, as a death penalty state, Texas must exert all reasonable efforts to ensure that all death investigation is validated and of high quality throughout the state.

RESPONSE: Staff agrees with the assertion that acceptable standards lead to validated and high quality results. However research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt from accreditation at this time.

COMMENT: One commenter asked for clarification of the proposed rule because NAME is listed in the rules as one of the authorized accrediting bodies, but there is no description of the disciplines covered by their accreditation.

RESPONSE: Since forensic pathology has been recognized as exempt from DPS accreditation, further evaluation of the question is moot.

COMMENT: At least one comment asserts that NAME standards are not a basic standard that ensures quality and reliable pathology, but are standards that describe the pinnacle of practice, primarily for teaching institutions. Comments further assert that the standards will result in a severe crisis. Additionally, comments assert that only the largest counties in Texas, likely ones with affiliated medical schools, will be able to attain and maintain NAME accreditation. Comments assert that the total cost of the "unfunded mandate" will be millions of dollars.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore revised the rule as finally adopted to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments assert that the forensic pathology discipline should be placed in a scientifically neutral corner, such as the Texas Department of Health or Texas State Board of Medical Examiners.

RESPONSE: Staff believes that these comments are beyond the scope of DPS rulemaking activity under HB 2703.

COMMENT: Some comments assert that many small counties routinely have autopsies performed in hospitals and funeral homes and that, if NAME accreditation is required, counties would have to discontinue this practice and incur enormous expense.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments in favor of adoption of forensic pathology accreditation assert that every medical organization except medical examiners has accreditation and that accreditation is therefore appropriate.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time

COMMENT: Some comments in favor of adoption of forensic pathology accreditation assert that NAME standards are consistent with other accreditation bodies. These comments assert that NAME standards are misunderstood--there is flexibility in the checklists that can accommodate local counties progress within the accreditation process. Also asserted was that the true NAME standard for annual autopsies are 350 per medical examiner per year rather than 250 per year as suggested by some comments.

The favorable comments assert that the standard of 350 was carefully developed by NAME and is appropriate and supported by statistical research. Also asserted is that NAME will provide provisional accreditation to accommodate counties that are unable to meet the standards.

RESPONSE: Staff contacted NAME and confirmed that the standard of 350 autopsies per medical examiner per year is correct--350 is the maximum limit and 250 is a desirable target under NAME standards. Also, NAME reports that, if a medical examiner's office is in the active process of recruiting pathologists so as to reduce the autopsy caseload below the 350 limit, and the office is making a good faith effort to fill the positions by offering competitive compensation and fringe benefits, NAME would accept such actions as satisfactory progress.

However, although staff agrees with the favorable comments, staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: One commenter, a medical examiner in favor of adoption of forensic pathology accreditation, asserts that he served as a NAME inspector and the standards are easily obtainable. The commenter asserts that the costs of NAME compliance for the county served would be acceptable.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments against adoption of forensic pathology accreditation assert that many medical examiner offices will be unable to obtain accreditation and will be forced to either retain crime victim bodies until the conclusion of the criminal case or send bodies to one of the three accredited facilities in Texas and that neither of these options are acceptable. Some comments against adoption of forensic pathology accreditation assert that many medical examiner offices will be unable to meet NAME standards within the 2-year grace period of HB 2703.

RESPONSE: Staff research has been inconclusive as to the impact and cost of accreditation for forensic pathology to local communities. Comments by the affected communities have been conflicting and staff has found that the true fiscal impact of mandating accreditation of forensic pathology is unclear. Staff therefore has decided to revise the proposed rule to delete forensic pathology from an accredited discipline and exempt it from accreditation at this time. Further evaluation of this comment is moot.

COMMENT: Some comments against adoption of forensic pathology accreditation assert that exemption is appropriate based on *Garcia v. State*, 868 SW2d 337 (Tex. Crim. App. 1993) in which, it is asserted, the court determined that a medical examiner is not law enforcement but a disinterested third party.

RESPONSE: Staff agrees that exemption is appropriate but only for the reasons as stated in other parts of this preamble. Further evaluation is moot because staff revised the adopted sections to delete forensic pathology from the status of an accredited discipline and instead recognize the discipline as exempt from accreditation at this time.

COMMENT: One comment inquires about the possibility for pathologists in Texas to organize an accrediting body that would provide accuracy and standardization and use the NAME guidelines as a template for accreditation.

RESPONSE: Staff believes that a state accrediting body for forensic pathology could be recognized by DPS in the future if the standards identified for accreditation as described in these rules were met.

Digital Evidence

Comments were received from a number of entities regarding the applicability of DPS accreditation to digital evidence. Based on these comments and staff research, staff reached the conclusion that digital evidence should be exempt from accreditation by rule under the statutory exemption authority provided by Government Code §411.0205(c). The basis for this determination is explained in other parts of this preamble. Comments regarding digital evidence are summarized below.

COMMENT: Comments assert that digital evidence analysis is primarily a search for evidence and is not laboratory forensic analysis of physical evidence. Comments assert that digital evidence analysis is a "search" that has always been in the purview of police agencies rather than a laboratory function.

RESPONSE: Staff agrees that digital evidence collection in many cases may not be subject to the requirements of HB 2703 and these regulations. However, if a search involves analysis, manipulation, or application of analysis software leading to a conclusion, staff believes that it is forensic analysis. In cases where digital evidence analysis does constitute activity covered by HB 2703, staff has determined that exemption is appropriate as explained in other parts of this preamble at this time.

COMMENT: One comment asserts the following: DPS may not have the commitment to a digital evidence recovery program of accreditation; DPS lacks adequate expertise to pass judgment over other law enforcement agency practices regarding digital evidence; other law enforcement agencies have equipment, training and personnel that exceed DPS' current capacity.

RESPONSE: Staff believes that this comment is beyond the scope of DPS rulemaking activity under HB 2703.

COMMENT: Some comments assert that there is presently sufficient law that supports the guarantee of integrity in the processing and analysis of digital evidence. These comments assert that digital evidence should not be lumped together in the same category with physical evidence because that was not the intent of the law.

RESPONSE: Staff agrees that digital evidence is subject to sufficient laws assuring the integrity in processing and analysis of digital evidence, as is every other discipline under the Texas Rules of Evidence.

COMMENT: One comment against accreditation asserts that it is more important that examiners be certified and that there is

really no need for a "lab" to process digital evidence that fulfills evidentiary rules. The comment asserts that there are few tools really needed to conduct the acquisition and analysis, and a great deal of this work is done in the field and not in a "lab" at all. The comment also asserts that as long as the chain of custody is followed and best practices used, digital evidence should be admissible and any expert testimony may be left to the voir dire process in the courts.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: A comment in favor of adoption of accreditation for digital evidence asserts that digital evidence is similar to other physical evidence. The comment asserts this evidence can be lost, contaminated, or destroyed if not handled properly. The comment asserts that short training programs are inadequate because the investigator lacks an established standard operating procedure for analysis, handling or processing evidence, does not have quality assurance procedures to provide accurate repeatable results, and lacks quality assurance practice such as inter-laboratory comparisons, proficiency testing programs, and internal quality control schemes. This comment generally asserts that any cost associated with the accreditation is necessary because it is the only way to ensure accurate forensic results.

RESPONSE: Staff agrees with this comment and believes that forensic analysis of digital evidence should be subject to accreditation at a future date. Further discussion of this matter is contained in other parts of this preamble.

COMMENT: Some comments assert that accreditation of digital evidence will cause the cost of operation of laboratory work to increase excessively. Comments assert that hardware turns over frequently and accreditation would require huge amounts of work in writing procedures for new hardware.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: Some comments assert that ASCLD/LAB requires a Bachelor of Science ("B.S.") Degree as a minimum qualification and that this would create an unnecessary hardship on the laboratories. Further, some comments assert that since current training requirements in the discipline often go beyond any four year degree program, the requirement is unnecessary.

RESPONSE: Staff research indicates that a B.S. degree is not an essential requirement for ASCLD/LAB accreditation. However, for reasons identified in other parts of this preamble, the proposed rule will be modified to exempt digital evidence from accreditation at this time, and therefore further review of this issue is moot.

COMMENT: At least one comment in favor of the accreditation of digital evidence asserts that other comments that the ASCLD/LAB requirement of a B.S. degree is incorrect and that the education level is directory in nature rather than mandatory and a laboratory would not fail accreditation if personnel lacked a B.S. degrees.

RESPONSE: Staff research indicates that a B.S. degree is not an essential requirement for ASCLD/LAB accreditation. However, for reasons identified in other parts of this preamble, the proposed rule will be modified to exempt digital evidence from accreditation at this time and therefore further review of this issue is moot.

COMMENT: Some comments assert that private laboratories will leave Texas if digital evidence is accredited because of the cost in accreditation.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: Some comments assert that digital evidence accreditation should be under the oversight of other agencies such as the Texas Commission on Law Enforcement Officer Standards and Education ("TCLEOSE").

RESPONSE: Staff believes that this comment goes beyond the DPS rulemaking scope provided under HB 2703.

COMMENT: One commenter asserts that the digital evidence products being developed for his particular district attorney office is excellent and does not necessitate accreditation. The commenter asserts that a key component in developing digital evidence is speed and the proposed requirement of accreditation will interfere with this need. More specifically, the comment asserts that accreditation will require centralization of digital evidence work and this will cause delay and decline in service levels.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment asserts that most investigators in the digital evidence discipline are qualified professionals that are certified by entities other than accrediting bodies such as ASCLD/LAB. The commenter asserts that this certification is sufficient. Some comments add that DPS should consider multiple certification bodies for accreditation purposes.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: One comment in favor of the accreditation of digital evidence asserts that the scientific community of ASCLD/LAB voted by an 81 percent margin to require digital evidence to be a non-optional forensic discipline and that state accreditation is therefore appropriate. The comment also asserts that the discipline presently lacks appropriate standard operating procedures for analysis, and lacks peer or administrative review to ensure quality assurance without accreditation. The comment asserts that adoption of the accreditation requirement will benefit citizens.

RESPONSE: Staff agrees with this comment and believes that forensic analysis of digital evidence should be subject to accreditation at a future date.

COMMENT: At least one comment against the accreditation of digital evidence asserts that digital evidence work is different than other physical evidence in that the investigator does not create a sample--the investigator creates a complete and accurate copy. These comments assert that the discipline is not a comparison function but rather a search function.

RESPONSE: Staff agrees that digital evidence collection in many cases may not be subject to the requirements of HB 2703 and these regulations. However, if that search involves the analysis, manipulation, or application of analysis software leading to a conclusion, staff believes that it is forensic analysis. In cases where digital evidence analysis does constitute activity covered by HB 2703, staff has determined that exemption at this time is appropriate as explained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that the digital evidence community does not generally recognize ASCLD/LAB accreditation for digital evidence and therefore should be exempt. The comment also points out that there are currently no ASCLD/LAB accredited digital evidence labs in the country as of the date of the comment and that this fact supports the conclusion that the discipline should be exempt.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that requiring accreditation will interfere with federal/state partnerships in the battle against electronic crime since federal electronic labs are not ASCLD/LAB accredited. Accreditation would eliminate the availability of many federal resources.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that accreditation by ASCLD/LAB is new and there are other means of certification.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that the federal court system accepts current processing standards and training used by law enforcement and most of these agencies are not accredited through ASCLD/LAB. The comment asserts that the requirement of accreditation would make Texas standards different than federal standards and that DPS should not require accreditation of the discipline because it would go against current trends.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that federal agencies have determined that it is inappropriate to create a specifically accredited "laboratory" when better results may be obtained by training specific investigators who work exclusively in the field.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that digital evidence accreditation will impair a criminal defendant's ability to prepare evidence since few if any private laboratories will hold accreditation for the foreseeable future.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

COMMENT: At least one comment against the accreditation of digital evidence asserts that DPS should consider digital evidence as distinctly different from physical, chemical, or biological evidence since digital evidence can easily be reproduced to exact standards and is not finite like physical evidence. These comments assert that staff should recognize that digital evidence is not "physical evidence" as provided under HB 2703.

RESPONSE: Staff believes that additional research is necessary to properly evaluate the scope of accreditation for digital evidence. Further discussion of this is contained in other parts of this preamble.

§28.125. Disciplines, Subdisciplines, and Procedures to Which Statutory DPS Accreditation Does Not Apply. This section describes disciplines that may not be forensic analysis under Code of Criminal Procedure, Article 38.35, but for which laboratory may elect to apply for accreditation if the discipline is accredited by a recognized accrediting body. The section as finally adopted has been reorganized for clarification and non-substantive changes have been made. Also the section adds new clause (vi) to the section, under paragraph (2)(B) to provide for the director make determinations of non-applicability.

Comments were received regarding the applicability of accreditation to a number of disciplines and subdisciplines. The comments and the department's responses are discussed in detail in other provisions of this preamble and are not repeated under this section.

§28.126. Disciplines and Subdisciplines Exempt from Statutory DPS Accreditation. This section describes disciplines or subdisciplines that are forensic analysis under Article 38.35 but are exempt by rule from DPS accreditation based on the legal standards for exemption that are identified in HB 2703. This rule was revised based on comments as explained in this section. In addition, the section adds new paragraph (11) to subsection (b) of the section to provide for the director to identify disciplines that are exempt from accreditation.

Forensic Pathology

Comments were received regarding the exemption of this discipline. The comments and responses are detailed in other provisions of this preamble and are not repeated under this section. Based on the comments, the final rule determines that the discipline is exempt from accreditation at this time. Note that, although forensic pathology is exempt from accreditation, a toxicology laboratory conducting forensic analysis is not exempt from accreditation. Staff interprets forensic toxicology to be specifically covered by HB 2703.

Digital Evidence

Comments were received regarding the exemption of this discipline. The comments and responses are detailed in other provisions of this preamble and are not repeated under this section.

Based on the comments, the final rule determines that the discipline is exempt from accreditation at this time.

Environmental Testing

Comments were received regarding the exemption of laboratories conducting investigation of environmental crimes.

In response to comments, staff has consulted with the Texas Commission on Environmental Quality ("TCEQ") and has concluded that it is appropriate to exempt environmental tests performed to determine the chemical, molecular, or pathogenic components of environmental media and the laboratories performing these tests. Currently, staff understands TCEQ to believe independent accreditation of environmental laboratories and environmental tests by DPS would be inappropriate and will remain so for some time. Under the provisions of Texas Water Code §§5.801 et seq, the TCEQ is charged with implementing an accreditation program for environmental testing laboratories. However, the program is not currently operational, and the TCEQ will not offer accreditations for a least a year. Even after the program is operational, other statutory provisions (HB 2912, 77th Legislature, Regular Session, §18.03(d)) allow environmental laboratories up to three years to become accredited. Therefore, environmental laboratories accredited by the TCEQ may not be available to law enforcement agencies until three years after the TCEQ implements its accreditation program. Since TCEQ may only accept the results of environmental tests from laboratories that comply with the requirements of the TCEQ's accreditation program, it is unlikely any other form of independent accreditation will be sought by the state's environmental laboratories. Therefore, independent accreditation is inappropriate for environmental laboratories at this time. Environmental tests are performed using widely recognized and mandated protocols and are commonly entered into evidence in civil and criminal proceedings pertaining to environmental violations.

The vast majority of all environmental testing is done for regulatory compliance and administrative purposes. Only a very small number of environmental tests are performed for the purpose of criminal prosecution. Even those tests are routinely conducted outside of what is commonly known as a "crime laboratory" by individuals not associated with any law enforcement agency. In fact, the TCEQ is not aware of any laboratory associated with a law enforcement agency that offers environmental testing.

Therefore, DPS staff and TCEQ believe that, until TCEQ's environmental laboratory accreditation program is operational and an adequate number of environmental laboratories have been accredited, an exception for environmental tests conducted to determine the chemical, molecular, or pathogenic components of environmental media and the laboratories conducting these tests is warranted under the provisions of Texas Government Code, §411.0205(c).

Other Comments

COMMENT: A request for clarification asks whether the proposed rule statement that, if no accreditation is available from a national accrediting body for a discipline or subdiscipline, a laboratory may not apply for voluntary or statutory accreditation means: 1) if there is no national accreditation then the laboratory is barred from applying or 2) the laboratory may apply for either type of accreditation.

RESPONSE: Staff believes that the comment demonstrates that the rule text as initially proposed was confusing. To eliminate confusion, the adopted rules explain the distinction between voluntary and statutory accreditation. The answer to the actual question posed by the comment is the following: if accreditation is unavailable for a discipline or subdiscipline that is recognized by the director as provided in adopted §28.123, then the laboratory may not apply for accreditation for that particular discipline or subdiscipline. For example, since there is no recognized accreditation for forensic anthropology, a laboratory may not apply for accreditation of that discipline. In the same way, a discipline that is exempt from accreditation is ineligible for accreditation by the director.

COMMENT: A request for clarification asks whether the language of the proposed rule justifies the conclusion that the criminal evidence generated by unaccredited disciplines would not be subject to the rule of inadmissibility set forth in HB 2703.

RESPONSE: Staff interpretation is that the HB 2703 rule of inadmissibility is inapplicable to an unaccredited discipline.

§28.127. Full DPS Accreditation. This section explains that the director may issue and renew applications for accreditation. Applicants for accreditation are directed to complete DPS form LAB-5 and include specific documentation. The form as finally adopted has been revised to reflect changes detailed in this preamble. Accredited laboratories are required to provide the director with copies of annual assessment documents. Accredited laboratories are required to provide the director with copies of correspondence and each report or communication between the laboratory and the independent accrediting body.

COMMENT: One commenter asks what "additional information" may be required by the director under §28.127(c).

RESPONSE: The kind of information that can be requested under this section cannot be stated with specificity since the information that may be necessary may depend on the specific circumstances of the application.

COMMENT: One commenter supports the proposed rule requirement that an applicant submit an accreditation certificate.

RESPONSE: Staff agrees with the submission.

COMMENT: Comments ask whether documents submitted to DPS by laboratories, including private laboratories, would become public information under public information laws.

RESPONSE: Staff interpretation is that the public information laws would apply to documents submitted by laboratories.

COMMENT: One commenter asks whether private laboratories will be required to submit copies of external DAB ("DNA Advisory Board") audits and ASCLD/LAB audits that are carried out at their facilities.

RESPONSE: Private laboratories will be required to submit copies of external audits (DAB or equivalent FBI documents) and ASCLD/LAB audits that are carried out at their facilities.

COMMENT: One comment asks what documents a laboratory will need to provide to DPS on a regular basis.

RESPONSE: Section 28.127 provides the answer to this question. If accredited by ASCLD/LAB, a laboratory is required to provide the director with a copy of each *Annual Accreditation Review Report*. If accredited by another recognized accrediting body, a laboratory is required to provide the director with a copy of each equivalent annual accreditation assessment document. The copy is to be submitted to the director at the same time that it

is due to the recognized accrediting body. A laboratory is also required to provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory is directed to submit the copy to the director no later than 10 business days after the date the laboratory receives or transmits the correspondence, report, or communication. Finally, a laboratory that discontinues a specific forensic discipline or subdiscipline is required to submit written notification to the director at least 10 business days before the effective date of the discontinuation.

COMMENT: One comment asks whether laboratories will be required to submit actual inspection documents. The comment expressed the concern that this could expose laboratories to greater access by opposing legal counsel than is necessary for a criminal case.

RESPONSE: The staff position is that the submission and review of inspection documents is an integral part of accreditation. Staff believes that the comment's underlying concern about document availability is a legislative issue that is beyond the scope of this rulemaking action.

COMMENT: One comment asserts that, since private laboratories perform work for criminal defense, the requirement that laboratories provide inspection documents to DPS could create conflicts of interest. The comment also asserts that potential DPS access would force defense laboratory work to be performed out of state.

RESPONSE: The staff position is that inspection documents need to be required as provided in these rules. The submission and review of inspection documents is an integral part of accreditation. Staff believes that the comment's underlying concern about document availability is a legislative issue that is beyond the scope of this rulemaking action.

COMMENT: One comment asks when a new start-up forensic testing operation will be required to begin the process of supplying information to DPS. The comment asked whether a private lab in Texas would be able to provide out-of-state services prior to acquiring accreditation.

RESPONSE: Entities interested in starting forensic testing operations should carefully review the provisional accreditation process described in §28.128. Application is recommended prior to conducting forensic testing that is covered by HB 2703. A laboratory examination for use in a court other than a Texas state court is beyond the scope of HB 2703 and these rules.

COMMENT: One comment asked if it would be possible that a discovery order could be issued requiring all documents held by DPS to be turned over relating to a laboratory, including a private laboratory.

RESPONSE: Staff interpretation is that the scenario raised by the comment is possible. However, the staff position remains that inspection documents need to be required as provided in these rules. The submission and review of inspection documents is an integral part of accreditation. Staff believes that the comment's underlying concern about document availability is a legislative issue that is beyond the scope of this rulemaking action.

COMMENT: One comment asserts that there is an error in the proposed rules for accreditation. The comment asserts that the proposed rules exempt video examinations from the accreditation requirement on the grounds that no nationally recognized accreditation standard applies to the discipline. The comment asserts that, in fact, the 2003 ASCLD/LAB manual does include video as a subdiscipline of Digital Evidence and that accreditation is possible for video examinations.

RESPONSE: Since the discipline of digital evidence is exempt, the subdiscipline of video examination will also be exempt under the rules.

§28.128. Provisional DPS Accreditation. This section explains that the director may issue and renew applications for provisional accreditation. Applicants for provisional accreditation are directed to complete DPS form LAB-5 and include specific documentation. Provisionally accredited laboratories are required to provide the director with copies of correspondence and each report or communication between the laboratory and the independent accrediting body. Provisionally accredited laboratories are required by rule to preserve one or more separate samples of the physical evidence and agree to preserve, and preserve those samples until all appeals in the case are final.

§28.129. Term for Provisional Accreditation. This section explains the term for provisional accreditation. Provisional accreditation is necessary to enable crime laboratories or other entities to have a way to perform necessary laboratory functions while waiting for formal notification of accreditation. Note that, as a housekeeping matter, subsection (a) in the proposed rule was deleted in the final rule because the time period for the provisional accreditation under that subsection has now expired.

§28.130. DPS Accreditation for a Limited Term. This section explains that an out of state, federal or private laboratory may apply for accreditation for a term less than the term normally available under the rules. For example, a private laboratory that is retained to conduct a single specialized test for a law enforcement agency may elect to hold accreditation only during the term that the test and analysis need to be covered by DPS accreditation.

§28.131. Withdrawal of DPS Accreditation. This section explains that the director may withdraw accreditation.

§28.132. Communication. This section provides contact information for the public to communicate with DPS regarding accreditation.

The following are additional comments that staff received that are not specifically connected to a particular proposed rule or the comment has an application to several proposed rules and could not be placed with a specific discussion of a particular section.

COMMENT: One commenter asks whether it would be possible to grandfather existing facilities.

RESPONSE: Staff believes that this is not possible under the language of HB 2703.

COMMENT: Some comments express the opinion that there is no single accrediting organization for facilities providing all possible types of scientific analysis. However, there are organizations that accredit individuals for almost all areas of scientific investigation and analysis. The comments suggest consideration of individual certifications for accreditation purposes.

RESPONSE: Staff believes that this submission is meritorious and will initiate a process to evaluate certification organizations for consideration as recognized accrediting bodies in the future. However, staff do not believe implementing this recommendation is feasible at this time. The rules will not be changed based on this submission at this time.

COMMENT: One comment inquires about the possibility of establishing different levels of accreditation for procedures performed throughout the state.

RESPONSE: Staff does not believe implementing this recommendation is feasible at this time. The rules will not be changed based on this submission at this time.

COMMENT: One comment states that although latent print examination is exempt, there are crime scene units that may verge on being subject to DPS accreditation.

RESPONSE: Staff agrees with this submission. In response to this concern, staff has worked to clarify the kinds of conduct that constitute "forensic analysis" in the adopted rules.

COMMENT: One comment asserts that in-state and out-of-state providers should have equal reporting requirements.

RESPONSE: Staff agrees with this submission. Staff believes that the current rules as adopted impose equal reporting requirements.

COMMENT: One comment asserts that there should be a time limit for how long a private operator should be allowed to do business in Texas without pursuing accreditation.

RESPONSE: Staff agrees with this submission and believes that the issue is addressed by HB 2703 and these proposed rules. A laboratory may operate without accreditation until September 1, 2005, provided the laboratory complies with the legal requirements of HB 2703, requiring retention of a second sample. After that date, a laboratory will need to obtain at least provisional accreditation from DPS.

COMMENT: One commenter asserts that there should be some mechanism whereby facilities that attempt to get certification but fail multiple attempts are prohibited from continuing operation.

RESPONSE: Staff believes that the HB 2703 "rule of inadmissibility" would apply if a laboratory fails to obtain accreditation.

COMMENT: One comment asked what the repercussions are if a facility loses all accreditation temporarily.

RESPONSE: Staff believes that the HB 2703 "rule of inadmissibility" would apply if a facility loses accreditation.

COMMENT: One comment asked for a statement regarding the ramifications for a non-accredited laboratory performing criminal casework within Texas.

RESPONSE: Staff believes that the HB 2703 "rule of inadmissibility" would apply to evidence introduced in a state criminal court proceeding without regard to the location of the testing.

The new sections are adopted under the authority of Government Code §411.0205, which provides that the DPS director by rule shall establish an accreditation process for crime laboratories and other entities conducting forensic analyses of physical evidence for use in criminal proceedings.

§28.121. Purpose.

(a) Generally. This subchapter contains the director's rules adopted under Government Code, §411.0205, that govern:

(1) the granting of recognition to an outside accrediting body by the Department of Public Safety (DPS); and

(2) the accreditation of an individual crime laboratory or other entity by DPS.

(b) Accreditation sequence. To be accredited by DPS under this subchapter, a laboratory must first be accredited by an accrediting body that is recognized by the director under this subchapter.

(c) Source of evidence predicate. The Code of Criminal Procedure, Article 38.35, requires DPS accreditation of an individual laboratory or other entity for admission of evidence or testimony if the laboratory or entity conducts a forensic analysis of physical evidence for use in a criminal proceeding.

(d) Statutory DPS accreditation. A laboratory may apply for statutory DPS accreditation if accreditation is required for evidence admissibility under Code of Criminal Procedure, Article 38.35.

(e) Voluntary DPS accreditation. A laboratory may apply for voluntary DPS accreditation for any purpose if permitted under this subchapter.

§28.122. Definitions.

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

(1) Environmental testing--refers to an analysis by a laboratory conducted for the purpose of determining the chemical, molecular, or pathogenic components of air, water, soil, or other environmental media for use in an administrative, civil, or criminal matter.

(2) Forensic analysis--has the meaning assigned by Code of Criminal Procedure, Article 38.35. The term does not include:

(A) an expert examination or test excluded under Code of Criminal Procedure, Article 38.35, subsection (a)(1) or (2);

(B) an expert examination or test conducted principally for the purpose of scientific research, medical practice, civil or administrative litigation, or other purpose unrelated to determining the connection of physical evidence to a criminal action;

(C) the location, identification, collection, or preservation of physical evidence by laboratory or investigative personnel unless the activity is integral to an expert examination or test; or

(D) field testing such as screening or presumptive testing unless the activity is integral to an expert examination or test.

(3) Forensic pathology--includes a medical examiner. The term does not include a toxicology or other laboratory associated with the office of a medical examiner.

(4) Recognized accrediting body--refers to an entity outside DPS that:

(A) is recognized by the director under this subchapter;

(B) issues an accreditation accepted throughout the relevant scientific community; and

(C) accredits a laboratory, including its personnel, procedures, and facilities, whether the body uses 'accreditation,' 'certification,' or a similar term. In this subchapter, the term accreditation does not include the certification of an individual unless that certification is relevant to an accreditation review of personnel employed by a laboratory or entity.

(5) Laboratory or crime laboratory--refers to an entity that conducts a forensic analysis of physical evidence for use in a criminal proceeding.

(6) Physical evidence--has the meaning assigned by Code of Criminal Procedure, Article 38.35.

§28.123. Recognition Process; List of Recognized Accrediting Bodies.

(a) Process. The director shall recognize an accrediting body under this section if the director determines that the accrediting body:

(1) issues an accreditation that is accepted throughout the relevant scientific community and appropriate or available to a laboratory;

(2) has established adequate accreditation criteria reasonably likely to ensure trustworthy forensic analysis;

(3) requires a periodic competency audit or review of the personnel, facilities, and procedures employed by a laboratory to conduct a forensic analysis; and

(4) withholds, grants, or withdraws its accreditation of a crime laboratory based on its own determination of a reasonable likelihood of meaningful corrective action for each deficiency noted during the periodic audit or review.

(b) List of recognized bodies and disciplines. The director recognizes the following accrediting bodies, subject to the stated discipline or subdiscipline limitations:

(1) American Board of Forensic Toxicology (ABFT)--recognized for accreditation of toxicology discipline only.

(2) American Society of Crime Laboratory Directors, Laboratory Accreditation Board (ASCLD/LAB)--recognized for accreditation of all disciplines which it accredits, except digital evidence and a crime scene search team.

(3) National Forensic Science Technology Center (NFSTC)--recognized for accreditation of biology only, including the subdiscipline of DNA.

§28.124. Disciplines and Subdisciplines Subject to DPS Accreditation.

(a) 'Forensic analysis'/recognized accreditation. This section describes a discipline or subdiscipline that involves forensic analysis for use in a criminal proceeding and for which accreditation is available from an accrediting body that is recognized by the director under this subchapter.

(b) By entire discipline. A laboratory may apply for DPS accreditation for one or more of the following disciplines:

(1) controlled substances;

(2) toxicology;

(3) biology;

(4) firearms/toolmark;

(5) questioned documents;

(6) trace evidence; or

(7) other discipline if approved by a recognized accrediting body and the director.

(c) Limited to subdiscipline. A laboratory may apply for DPS accreditation limited to one or more of the following subdisciplines:

(1) under the controlled substances discipline, subdiscipline limitation may include controlled substance (marihuana only) or similar limitation;

(2) under the toxicology discipline, subdiscipline limitation may include toxicology (blood alcohol only) or similar limitation;

(3) under the biology discipline, subdiscipline limitation may include biology (serology only) or similar limitation;

(4) under the firearms/toolmark discipline, subdiscipline limitation may include: firearms/toolmarks (firearms only), (serial number restoration only), or similar limitation;

(5) under the questioned documents discipline, subdiscipline limitation may include questioned documents (handwriting only) or similar limitation;

(6) under the trace evidence discipline, subdiscipline limitation may include: trace evidence (fire debris only), (explosives only), (fibers only), (gun shot residue only), (glass only), (hairs only), (paint only), (filaments only), or similar limitation; and

(7) other discipline and its related subdiscipline if accredited by a recognized accrediting body and the director.

(d) A laboratory may chose to assign a particular subdiscipline to a different administrative section or unit in the laboratory. For example, the subdiscipline of impression evidence, including footwear, tiretrack, and similar impression evidence, may be administratively assigned by the laboratory to its trace evidence, firearms, or questioned document section. The director deems impression evidence to be a subdiscipline of several disciplines under this subchapter, including trace evidence, firearms/toolmark, or questioned documents.

(e) If an accreditation for a subdiscipline is accompanied by the term 'only' or a similar notation, DPS will deem the accreditation to exclude other subdisciplines in that discipline.

§28.125. Disciplines, Subdisciplines, and Procedures to Which Statutory DPS Accreditation Does Not Apply.

This section describes a discipline, subdiscipline, or procedure excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) or by this subchapter based on their nature.

(1) Voluntary DPS accreditation only. This paragraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) and for which recognized accreditation is available. A laboratory may apply for voluntary DPS accreditation for: latent print examination (including development and comparison).

(2) No DPS accreditation.

(A) This subparagraph describes a discipline, subdiscipline, or procedure that is excluded from the definition of forensic analysis by the Code of Criminal Procedure, Article 38.35, subsection (a) and for which no recognized accreditation is appropriate or available. A laboratory may not apply for voluntary or statutory DPS accreditation for: breath specimen testing under Transportation Code, Chapter 724.

(B) This subparagraph describes a discipline, subdiscipline, or procedure that does not normally involve forensic analysis of physical evidence for use in a criminal proceeding and for which recognized accreditation is inappropriate or unavailable. A laboratory may not apply for voluntary or statutory DPS accreditation for:

(i) forensic photography;

(ii) non-criminal paternity testing;

(iii) non-criminal testing of human or nonhuman blood, urine, or tissue;

(iv) a crime scene search team (whether or not associated with an accredited laboratory) if the team does not engage in forensic analysis because it only engages in the location, identification, collection, or preservation of physical evidence and the activity is not integral to an expert examination or test;

(v) other evidence processing or handling that is excluded under §28.122(2)(B), (C), or (D) of this subchapter (relating to Definitions); or

(vi) other discipline or subdiscipline so determined by the director.

§28.126. Disciplines, Subdisciplines, and Procedures Exempt from Statutory DPS Accreditation.

(a) This section describes a discipline, subdiscipline, or procedure that is 'forensic analysis' but is not subject to accreditation by one or more accrediting bodies recognized by the director under this subchapter.

(b) Even though a discipline or subdiscipline is forensic analysis, the director has determined that no accreditation is appropriate or available from a recognized accrediting body for the following disciplines, subdisciplines, or procedures and a laboratory may not apply for voluntary or statutory DPS accreditation for:

(1) sexual assault examination of the person;

(2) forensic pathology, anthropology, entomology, or botany;

(3) environmental testing;

(4) facial or traffic accident reconstruction;

(5) digital evidence (subdisciplines may include computer forensics, audio, video, or imaging);

(6) polygraph examination;

(7) voice stress, voiceprint, or similar voice analysis;

(8) forensic hypnosis;

(9) statement analysis;

(10) profiling; or

(11) other discipline or subdiscipline so determined by the director.

§28.127. Full DPS Accreditation.

(a) Issuance and renewal. The director may issue or renew voluntary or statutory accreditation under this section.

(b) Application. An applicant for full DPS accreditation shall complete and submit a current form LAB-5 and attach copies of the following:
Figure: 37 TAC §28.127(b)

(1) an accreditation certificate and letter of notification of accreditation from an accrediting body recognized by the director under this subchapter; and

(2) each document provided by the recognized accrediting body that identifies the discipline or subdiscipline for which the laboratory has received accreditation and any limitation or restriction regarding that accreditation.

(c) Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to director.

(1) If accredited by ASCLD/LAB, a laboratory shall provide the director with a copy of each *Annual Accreditation Review Report*. If accredited by another recognized accrediting body, a laboratory shall provide the director with a copy of each equivalent annual accreditation assessment document. The copy shall be submitted to the director at the same time that it is due to the recognized accrediting body.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 10 business days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline or subdiscipline shall submit written notification to the director at least 10 business days before the effective date of the discontinuation.

§28.128. Provisional DPS Accreditation.

(a) Issuance and renewal. The director may issue or renew provisional accreditation under this section.

(b) Application. An applicant for provisional DPS accreditation shall complete and submit a current form LAB-5 as referenced in §28.127(b) of this subchapter (relating to Full DPS Accreditation) and attach copies of the following:

(1) the application for accreditation by an accrediting body recognized by the director under this subchapter;

(2) the initial audit, inspection, or review report from an independent auditor based on the standards of the recognized accrediting body;

(3) a full response in writing to the initial audit, inspection, or review report described in paragraph (2) of this subsection; and

(4) each document provided by the recognized accrediting body that identifies the discipline or subdiscipline for which the laboratory seeks accreditation.

(c) Additional information. The director may require additional information to properly evaluate the application either as part of the original application or as supplemental information.

(d) Reports to director.

(1) The laboratory shall request that the recognized accrediting body provide the director with a copy of each audit, inspection, or review report conducted before full DPS accreditation.

(2) A laboratory shall provide the director with a copy of correspondence and each report or communication between the laboratory and the recognized accrediting body. The laboratory shall submit the copy to the director no later than 10 business days after the date the laboratory receives or transmits the correspondence, report, or communication.

(3) A laboratory that discontinues a specific forensic discipline, subdiscipline, or procedure shall submit written notification to the director at least 10 business days before the effective date of the discontinuation.

(e) Second sample required. A laboratory with provisional DPS accreditation under this section must:

(1) preserve one or more separate samples of the physical evidence for use by the defense attorney or use under order of the convicting court; and

(2) agree to preserve, and preserve those samples until all appeals in the case are final.

§28.129. Term for Provisional Accreditation.

(a) Lab before August 19, 2003, filing provisional application on or before September 1, 2004. A laboratory or its discipline or subdiscipline that was in existence before August 19, 2003, and that applies for accreditation from a recognized accrediting body on or before September 1, 2004, may apply for a provisional DPS accreditation for a term not to exceed 180 days.

(b) Lab established and provisional application filed on or after August 20, 2003. A laboratory or its discipline or subdiscipline that was not in existence before August 20, 2003, and that applies for accreditation from a recognized accrediting body on or after that date may apply for a provisional DPS accreditation for a term not to exceed one year.

§28.130. DPS Accreditation for a Limited Term.

A laboratory, including an out of state, federal, or private laboratory, may request DPS accreditation for a term less than the term normally available under this subchapter.

§28.131. Withdrawal of DPS Accreditation.

(a) Automatic withdrawal. The director shall automatically withdraw:

(1) the full DPS accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body withdraws its relevant laboratory, discipline, or subdiscipline accreditation; or

(2) the provisional DPS accreditation for a laboratory, discipline, or subdiscipline at the date and time that the recognized accrediting body notifies the director that the laboratory has withdrawn its application for the relevant recognized accreditation of the laboratory, discipline, or subdiscipline.

(b) Director withdrawal. The director may withdraw full or provisional DPS accreditation for a laboratory, discipline, or subdiscipline if the laboratory fails to comply with a rule under this subchapter.

§28.132. Communication.

The laboratory shall communicate with DPS or the director under this subchapter through the DPS Crime Laboratory Service at:

(1) telephone number: (512) 424-2105;

(2) fax number: (512) 424-5645;

(3) e-mail address: LABQA@txdps.state.tx.us;

(4) web site: http://www.txdps.state.tx.us;

(5) Post Office Box mailing address: Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, P.O. Box 4143, Austin, Texas 78765-4143; and

(6) physical mailing address: Crime Laboratory Service, QA MSC 0460, Texas Department of Public Safety, 5805 North Lamar Boulevard, Austin, Texas 78752-4422.

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

Filed with the Office of the Secretary of State on November 18, 2003.

TRD-200307930

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: December 17, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 424-2135

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER B. BENEFITS, CLAIMS AND APPEALS

The Texas Workforce Commission (Commission) adopts the repeal of §815.28, Work Search Requirements, to Chapter 815, Unemployment Insurance, Subchapter B, Benefits, Claims and Appeals, without changes as proposed in the September 26, 2003, issue of the *Texas Register* (28 TexReg 8304) and new §815.28 with changes.

The adoption document is organized into four parts:

Part I. Purpose and Background.

Part II. Comment Summaries and Responses.

Part III. Repeal.

Part IV. New Rule.

Part I. Purpose and Background.

A. Purpose. The purpose of the adopted rule is to set forth work search requirements for unemployment insurance claimants (claimants) and the process by which Local Workforce Development Boards (Boards) formulate the minimum number of weekly work search contacts a claimant must perform to continue to be eligible for unemployment benefits.

B. Background: Under Section 207.021, Texas Labor Code, claimants must perform certain activities to receive unemployment insurance benefits, including:

(1) register for work at a Texas Workforce Center, and

(2) demonstrate the ability to work and to be available for work.

Consistent with Texas Unemployment Compensation Act, contained in Chapters 201 - 215, Texas Labor Code, demonstration by a claimant of ability to work and availability for work includes providing documentation that the claimant is actively seeking work.

A primary goal of the Commission is to encourage claimants to obtain suitable work at the earliest possible opportunity. The rapid reattachment to the workforce by claimants accomplishes several results. First, employers are able to access the available workers at the earliest possible opportunity and second, claimants are no longer dependent upon unemployment insurance benefits. Reattaching claimants to the workforce at the

earliest opportunity also results in a workforce system that offers employers, individuals and communities the opportunity to achieve and sustain economic prosperity.

1. Stronger Links with Boards and Local Labor Market Information. This rule represents the integration of the Unemployment Compensation function and the Boards. The Boards, through the Workforce Centers, provide claimants with solutions to assist claimants with reattachment to the workforce.

2. Registering for Work. When filing a claim for unemployment insurance benefits, each claimant is instructed to register for Wagner-Peyser work services as required by statute. The claimants are informed that as part of the eligibility requirements to receive unemployment insurance benefits, they must have a work registration on file within seven days of filing an initial claim, and that they may register for work via either the Texas Workforce Commission job matching website or by contacting the Workforce Center nearest the claimant's place of residence. The Commission mails to each claimant immediately after the claimant has filed for unemployment compensation an information packet which includes the name, location and phone number of the nearest Workforce Center.

3. Number of Work Search Contacts. The Commission expects that each claimant should act in the same manner as a reasonably prudent person who is out of work and seeking work. The Commission has determined that to demonstrate that he/she is actively seeking work, a claimant must make at least three weekly work search contacts. The previous minimum number was at least two weekly work search contacts.

The Commission recognizes that the new work search requirement represents an increase over the previous minimum requirement, and that the minimum weekly work search requirement in other states with such a requirement generally ranges from one to three contacts per week. The minimum requirement of three contacts per week therefore places Texas on the leading edge in support of a renewed emphasis on work search for continuing eligibility for unemployment compensation.

Many claimants might make far more than three contacts per week, but the Commission has determined that three contacts per week is the minimum acceptable level for most workforce areas of the state. The Commission has further determined that it may be appropriate to require more than three contacts per week, depending upon local labor market conditions as determined by the Boards. The Commission has also concluded that a review of the assigned number of contacts for each workforce area should be conducted by the Board at least once per year because of potential changes in the economy.

The Commission has determined that the Boards, rather than the Commission, are more knowledgeable about local labor market information and are thus in a better position to set the appropriate minimum number of weekly work search contacts for claimants residing in the applicable workforce area. The rule creates flexibility for Boards to change the minimum required number of weekly work search contacts under certain circumstances. The rule describes the procedure a Board shall use when establishing a number of weekly work search contacts that a claimant residing in its respective workforce area must make in order for the claimant to maintain eligibility for benefits.

In providing for the Boards to set the minimum number of weekly work search contacts, the Commission recognizes that individuals residing in rural counties throughout the state may have less opportunity to meet work search contact requirements. For that reason, the Commission determined that a reduction in the minimum number of weekly work search contacts may be appropriate for rural counties based on specific local labor market information and conditions. The Commission has determined that it is appropriate to give Boards with rural counties the discretion to consider a reduction in the work search requirement for the rural counties in their workforce areas if local workforce conditions warrant. The Commission defined rural counties on the basis of objective population data, and determined that a county population of not more than 10,000 on July 1 of each year is a clear and justifiable measurement to use.

4. Examples of Work Search Activities. The rule also includes clarification of what constitutes a productive work search by providing examples of productive work search activities. The Commission has determined that to hasten their return to work, claimants will benefit from additional guidance regarding what constitutes a productive work search. The rule now provides several examples of productive work search activities. These activities are examples of the types of activities that the Commission has determined will assist a claimant in obtaining employment.

5. Documentation of Work Search. The Commission continues to stress the importance of work search in instructions to claimants, and they are told to keep a log documenting their weekly work search activities. Work search log forms are mailed to claimants with benefit warrants. Claimants may also obtain log forms from the Commission web page at http://www.twc.state.tx.us/ui/bnfts/worksearchlog.html. In addition, other information is also provided on how to search for work on the Commission web page at http://www.twc.state.tx.us/ui/bnfts/claimantinfo.html.

6. Enforcement and Accountability. Regarding the requirement to register for work, verification of compliance with work registration is automated between the unemployment insurance process and the Job Service Matching System, and claimants who do not register for work may be held ineligible for benefits.

Regarding the work search requirement, enforcement includes the Commission requiring claimants to present the work search logs upon request at any time during the benefit year in which the claimant is eligible for benefits. The Commission also verifies the work search of the claimants using random sampling that has been found statistically valid as an enforcement tool. Failure of claimants to maintain work search logs may result in loss of benefits.

7. Coordination Activities. Prior to proposing this new rule, the Commission circulated a policy concept paper outlining the changes to the Board chairs, members and executive directors, and the Workforce Leadership of Texas (WLT) Policy Committee.

Part II. Comment Summaries and Responses.

The Commission received comments on the rule during the comment period from the following: the Coastal Bend Workforce Development Board and the Texas AFL-CIO. One commenter disagreed with the rule and one commenter disagreed with one provision within the rule. A summary of the comments and responses to the comments are as follows:

Comment: Two commenters focused on the 10,000 population threshold for designating what constitutes a rural county. The commenters requested that the threshold should be established at the local level.

Response: The Commission has determined, as discussed in Part I.3 of the Preamble, that claimants are more likely to obtain reemployment faster if they make more work search contacts each week. However, in some rural counties with populations less than 10,000, employment opportunities may be limited, especially during an economic downturn. Accordingly, the rule provides Boards with the ability to reduce weekly work search contacts in rural counties when local conditions warrant a reduction. The 10,000 threshold for designating a rural county was determined by the Commission after careful consideration of population data. For these reasons, the Commission sees no need to change the rule.

Comment: One commenter suggested that, in light of the poor unemployment outlook, increasing claimants' weekly numerical work search requirements from the current two-contact per week requirement places an unnecessary burden on claimants.

Response: The Commission has concluded that rapid reemployment, especially during difficult times, requires a greater commitment on the part of claimants to the active work search requirements for Unemployment Compensation eligibility. The Commission has sought to avoid producing an unnecessary burden on claimants by creating a flexible concept for productive work search activities in the new provision. This issue is also discussed throughout Part I of the Preamble. The Commission disagrees that a change in the rule is necessary.

Comment: One commenter suggested that increasing weekly numerical work search requirements will also place an increased burden on employers to handle and keep records of "meaningless" work search contacts.

Response: The rule does not include any recordkeeping requirement for employers. In addition, the rule seeks to minimize the burden on employers by emphasizing that the claimant's work search should be a productive one, focusing on contacts which are likely to result in reemployment. The Commission, therefore, disagrees that a change in the rule is needed.

Comment: One commenter suggested that the resources devoted to enforcing work search requirements could be better spent by redoubling efforts to move people into meaningful work situations.

Response: The Workforce Network has increased its efforts and the resources it invests to move people into meaningful work situations. The Network has established new, aggressive efficiency measures for Boards placing claimants into suitable work, improved job matching systems, placed increasingly greater emphasis on developing job listings, and has improved claimants' job readiness through workshops and retraining opportunities. Moreover, TWC's fundamental mission is to support a healthy and vibrant state economy by improving the economic well-being and self-sufficiency of Texans. In the Commission's view, encouraging claimants to actively search for work is completely consistent with these efforts. The Commission also believes that the resources devoted to implementation of this rule are appropriate. For these reasons, the rule does not need to be modified.

Comment: One commenter noted that the Legislature has rejected plans to codify similar work search rules into statute, and suggested that the previous version of this rule adequately addressed the Legislature's intent.

Response: The Commission considers that the agency's charge from the Legislature is to implement rules that enforce the statutory eligibility requirements for Unemployment Compensation, including requirements that claimants be able, available, and actively seeking work. Therefore, no modification to the rule is needed.

Comment: One commenter questioned whether the rule changes are consistent with prior actions by the Commission that were based on a cost benefit analysis relating to verifying work search contacts.

Response: The Commission has performed a cost benefit analysis regarding the verification of work search activities by all claimants. The rule, however, does not address the issue of verification methods. Rather, it clarifies what constitutes a sufficient number of work search contacts in a way that reflects local labor market conditions.

Although no changes were made in response to comments, statutory and rule exemptions to the work search requirement are being added to the rule for clarification. Specifically, the Commission has clarified the classification of individuals who are exempt:

individuals participating in a Shared Work plan, §215.041(c), Texas Labor Code;

individuals participating in Agency approved or Trade Act training, §207.022 and §207.023, Texas Labor Code;

individuals who are otherwise exempted by law.

For consistency, the following terms were referenced in the same manner throughout the rule: "Local Workforce Development Boards," "workforce areas," and "minimum number of weekly work search contacts." Also, non-substantive changes were made to subsections (d) through (g) of this rule to clarify whether it is the Board or the Agency that is responsible for the provision.

40 TAC §815.28

The repeal is adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 207.001,Texas Labor Code, which provides that benefits are paid through the Commission in accordance with rules adopted by the Commission and are due and payable under this subtitle only to the extent provided by subtitle A; and

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

The adopted repeal affects Texas Labor Code, Title 4.

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

Filed with the Office of the Secretary of State on November 18, 2003.

TRD-200307933

John Moore
General Counsel
Texas Workforce Commission
Effective date: December 8, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 463-2573

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40 TAC §815.28

The new rules are adopted under the following sections:

Section 301.0015, Texas Labor Code, which provides that the Commission has authority to adopt rules necessary to administer the Commission's policies, including rules necessary for the administration of Title 4, Texas Labor Code, relating to employment services and unemployment;

Section 207.001, Texas Labor Code, which provides that benefits are paid through the Commission in accordance with rules adopted by the Commission and are due and payable under this subtitle only to the extent provided by subtitle A; and

Section 302.002(d), Texas Labor Code, which authorizes the Commission to adopt, amend or repeal such rules in accordance with Chapter 2001, Government Code as necessary for the proper administration of the Workforce Development Division.

The adopted new rule affects Texas Labor Code, Title 4.

§815.28. Work Search Requirements.

(a) Purpose. The purpose of this rule is to describe the work search requirements and process that must be met for claimants to continue to receive unemployment compensation benefits. A claimant is required to register for work, to actively seek work and be available for work, as well as accept suitable work. The rule also describes the process to be utilized by Local Workforce Development Boards (Boards) when formulating the numerical weekly work search contact requirements.

(1) A claimant shall be considered available for work during the time the claimant is making a reasonable search for suitable work as defined by this section.

(A) Work registration alone does not establish that the claimant is making a reasonable search for suitable work.

(B) The claimant shall make a personal and diligent search for work.

(C) Unreasonable limitations by a claimant as to salary, hours, or conditions of work indicate that a claimant is not making a reasonable search for suitable work.

(D) The Agency expects each claimant to act in the same manner as a prudent person who is out of work and seeking work.

(E) This rule shall not apply to:

(i) individuals participating in a Shared Work plan, §215.041(c) of the Act;

(ii) individuals participating in Agency approved or Trade Act training, §207.022 and §207.023 of the Act; or

(iii) individuals who are otherwise exempted by law.

(2) The reasonableness of a search for work will, in part, depend upon the employment opportunities in the claimant's labor market area. A work search that may be appropriate in a labor market area with limited opportunities may be totally unacceptable in an area with greater opportunities.

(b) General Work Search Requirements. A claimant shall make the minimum number of weekly work search contacts as required by the Agency.

(1) The claimant will be notified of the minimum number of weekly work search contacts required.

(2) If there is a change to the minimum weekly number of work search contacts, the claimant shall be notified of the change in writing by U.S. mail.

(3) Claimants are required to maintain weekly work search contact logs and may be required to submit weekly work search contact logs, using an acceptable method as determined by the Agency.

(4) The Agency shall provide to and publish guidelines for claimants describing the types of activities that may constitute a work search contact for purposes of a productive search for suitable work. Examples of such activities include, but are not limited to:

(A) utilizing employment resources available at Workforce Centers that directly lead to obtaining employment, such as:

(i) using local labor market information;

(ii) identifying skills the claimant possesses that are consistent with targeted or demand occupations in the local workforce development area;

(iii) attending job search seminars, or other employment workshops that offer instruction in developing effective work search or interviewing techniques;

(iv) obtaining job postings and seeking employment for suitable positions needed by local employers;

(B) attending job search seminars, job clubs, or other employment workshops that offer instruction in improving individuals' skills for finding and obtaining employment;

(C) interviewing with potential employers, in-person or by telephone;

(D) registering for work with a private employment agency, placement facility of a school, or college or university if one is available to the claimant in his or her occupation or profession; and

(E) other work search activities as may be provided in Agency guidelines.

(5) Failure to comply with work search requirements, without good cause, could result in an ineligibility determination that may result in a loss of benefits.

(c) Number of Work Search Requirements. The minimum number of weekly contacts assigned shall be three work search contacts for all claimants, unless otherwise provided by this section.

(d) A Board, based on specific local labor market information and conditions, may advise the Agency that a claimant residing in the workforce area are required to make more than three work search contacts per week.

(e) Rural Counties. In counties designated as "rural" by the Agency the Board may reduce the minimum number of weekly work search contacts in response to specific local labor market information and conditions. "Rural" counties are defined as those counties having a population estimated by the Texas State Data Center at Texas A&M University to be not more than 10,000 as of July 1 of the most recent year for which county population estimates have been published.

(f) Local Boards shall have the flexibility within the guidelines provided in this section to formulate the appropriate minimum number of weekly work search contacts for their respective workforce area, using appropriate guidelines to be developed in consultation with agency staff, and shall maintain written documentation. Boards shall review the minimum number of weekly work search contacts for each workforce area at least once per year on a date to be determined by the Agency.

(g) Local Policies. A Local Board shall develop, adopt, and modify its policies to promulgate the appropriate methodology for formulating the appropriate number of work search contacts for the workforce area in a public process consistent with the procedures required for compliance with the Texas Open Meetings Act, Texas Government Code, Chapter 551 *et seq*. A Board shall maintain written copies of the policies that are required by federal and state law or as requested by the Agency and make such policies available to the Agency and the public upon request. A Board shall also submit any modifications, amendments, or new policies to the Agency no later than two weeks after adoption of the policy by the Board.

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

Filed with the Office of the Secretary of State on November 18, 2003.

TRD-200307934
John Moore
General Counsel
Texas Workforce Commission
Effective date: December 8, 2003
Proposal publication date: September 26, 2003
For further information, please call: (512) 463-2573

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PART 21. TEXAS COUNCIL FOR DEVELOPMENTAL DISABILITIES

CHAPTER 876. GENERAL PROVISIONS

The Texas Council for Developmental Disabilities (TCDD) adopts amendments to §§876.1-876.3, the repeal of §876.4 and new §§876.4-876.12 concerning general provisions, without changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6259).

The sections are being amended to update rules transferred to the Texas Council for Developmental Disabilities by the Texas Rehabilitation Commission following passage of HB 1610 by the 76th Texas Legislature that became effective September 1, 1999. The proposed revisions update rules consistent with TCDD policies and procedures and provide the public with information about TCDD processes and procedures.

One Comment was received regarding adoption of these sections. Bob Kafka, ADAPT of Texas, commented that TCDD "promotes issues that effect all folks with disabilities, regardless of label. ADAPT of Texas thinks this is an opportunity to change the name of the Texas DDC to the Texas Disabilities Council (TDC). ADAPT recommends changing the name of Texas DDC to the Texas Disabilities Council."

State statute establishes the Texas Council for Developmental Disabilities. Any change in the name is thus beyond the scope of the proposed Rules.

40 TAC §§876.1 - 876.12

The amendments and new sections are adopted under the Human Resources Code, Title 7, Chapter 112.020(b)(1), which provides TCDD with the authority to prescribe, adopt, and enforce rules.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308049
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 14, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 437-5432

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40 TAC §876.4

The repeal is adopted under the Human Resources Code, Title 7, Chapter 112.020(b)(1), which provides TCDD with the authority to prescribe, adopt, and enforce rules.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308050
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 14, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 437-5432

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CHAPTER 877. GRANT AWARDS

The Texas Council for Developmental Disabilities (TCDD) adopts the repeal to §877.1 and §877.2 and new §§877.1-877.5, concerning grant awards, without changes to the proposed text as published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6261).

The sections are being revised to update rules transferred to the Texas Council for Developmental Disabilities by the Texas Rehabilitation Commission following passage of HB 1610 by the 76th Texas Legislature that became effective September 1, 1999. The proposed revisions update rules consistent with TCDD policies and procedures and provide the public with information about TCDD processes and procedures.

Bob Kafka, ADAPT of Texas, commented that TCDD "promotes issues that effect all folks with disabilities, regardless of label. ADAPT of Texas thinks this is an opportunity to change the name of the Texas DDC to the Texas Disabilities Council (TDC). ADAPT recommends changing the name of Texas DDC to the Texas Disabilities Council."

State statute establishes the Texas Council for Developmental Disabilities. Any change in the name is thus beyond the scope of the proposed Rules.

40 TAC §877.1, §877.2

The repeals are adopted under the Human Resources Code, Title 7, Chapter 112.020(b)(1), which provides TCDD with the authority to prescribe, adopt, and enforce rules.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308051
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 14, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 437-5432

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40 TAC §§877.1 - 877.5

The new sections are adopted under the Human Resources Code, Title 7, Chapter 112.020(b)(1), which provides TCDD with the authority to prescribe, adopt, and enforce rules.

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

Filed with the Office of the Secretary of State on November 24, 2003.

TRD-200308052
Roger A. Webb
Executive Director
Texas Council for Developmental Disabilities
Effective date: December 14, 2003
Proposal publication date: August 8, 2003
For further information, please call: (512) 437-5432

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TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE, CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a petition filed by the staff of the Workers' Compensation Division that requests amendments to Rule XVIII - Group Purchase of Workers' Compensation in the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance (the Manual). The purpose of these amendments to the Manual is to amend Rule XVIII - Group Purchase of Workers' Compensation to implement Section 2 of HB 1865, which passed during the 78th Legislature. This bill amended Article 5.57A of the Texas Labor Code by expanding the definition of "group" to include two or more members of a trade association of business entities that join together with the approval of the Commissioner to purchase individual workers' compensation insurance policies covering each participating trade association member.

A public hearing on this matter will not be held unless a specific request for a hearing is submitted to the Office of the Chief Clerk during the comment period as defined herein.

The staff requests that the proposed amendments to the Manual as proposed herein be adopted effective 15 days after notice of adoption is published in the *Texas Register*.

A copy of the petition, including an exhibit with full text of the proposed amendments, is available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78714-9104. For further information or to request copies of the amendments, please contact Ms. Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. W-1103-23-I).

The staff and the Commissioner request that written comments to these proposed amendments be submitted no later than 5:00 p. m. on January 5, 2004 to Gene Jarmon, General Counsel and Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9014. An additional copy of the comments should be submitted to Nancy Moore, Deputy Commissioner, Workers' Compensation, Texas Department of Insurance, P. O. Box 149104, MC 105-2A, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200308152
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 25, 2003

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Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a petition filed by the staff that requests amendments to the Texas Addendum to the Fire Suppression Rating Schedule (Texas Addendum) which would change the storage of the safety education and exit drills reports and grammatically changes a sentence pertaining to the mandated frequency of fire drills.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period as defined herein.

The proposed amendments require school districts to keep their Fire Safety Education and Exit Drill reports and make them available upon request. Additionally, for ease in readability, a grammatical change was made to the sentence that pertains to the frequency of mandatory fire drills.

A copy of the petition, including the exhibit with the full text of the proposed amendments to the Texas Addendum, is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. F-1103-24-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on January 5, 2004 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of the comments must be submitted simultaneously to G. Mike Davis, State Fire Marshal, Mail Code 112-FM, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200308153

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 25, 2003

♦ ♦ ♦

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Agency Rule Review Plan--Revised

Texas Department of Transportation

Title 43, Part 1

TRD-200308142
Filed: November 25, 2003

♦ ♦ ♦

Proposed Rule Reviews

Texas Building and Procurement Commission

Title 1, Part 5

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9965), and the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review and consider for readoption with amendments Chapter 114. This chapter concerns the payment for goods and services, exceptions to the prompt pay process, invoicing, payments, disputed payments, and collection of debts.

The Texas Building and Procurement Commission is contemporaneously proposing amendments to Chapter 114, §§114.1, 114.5, 114.7, 114.9, and 114.10 , published elsewhere in this issue of the *Texas Register*.

TBPC finds that the basis for the original adoption of each rule in Chapter 114 continues to exist. The rules remain valid and applicable.

Comments on the proposed review may be submitted in writing to Cynthia de Roch, General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may be sent via email to travis.langdon@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within thirty (30) days of the publication date.

TRD-200308045
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: November 21, 2003

♦ ♦ ♦

In accordance with the rule review plan filed September 13, 2000 and published in the September 29, 2000 issue of the *Texas Register* (25 TexReg 9965), and pursuant to the Texas Government Code, §2001.039, the Texas Building and Procurement Commission (TBPC) proposes to review Chapter 115, §§115.1-115.11, concerning state leased property; Chapter 116, §§1-28, concerning state owned property and recycling; Chapter 122, §§1-3, concerning facilities planning and space allocation and Chapter 126, §§1-21, concerning state and federal surplus and salvage property.

Any proposed changes to the rules and responses to public comment will be published in the *Texas Register*.

The Commission will assess whether the initial reasons for the rules continues to exist.

Comments on the proposed review may be submitted in writing to Cynthia de Roch, General Counsel, P.O. Box 13047, Austin, Texas 78711-3047. Comments may be sent via email to travis.langdon@tbpc.state.tx.us. Comments regarding whether the reasons for adoption of these rules continue to exist must be received within thirty (30) days of the publication date.

TRD-200308044
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: November 21, 2003

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Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 102, Educational Programs, pursuant to the Texas Government Code, §2001.039.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 102 continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 463-9701. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 475-3499.

TRD-200307924
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Filed: November 17, 2003

♦ ♦ ♦

Texas Commission on Environmental Quality

Title 30, Part 1

The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 14, Grants, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 14 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 14 provides information and requirements related to grants. Chapter 14 includes: definitions specific to this chapter; the authority for the agency to award grants; the applicability or purpose that a grant may or may not be awarded; the types of funding that the agency may use for awarding grants; the means for determining recipient eligibility requirements and recipient selection criteria; guidelines for solicitations using requests for proposals; circumstances when a grant may be made by direct award; notice requirements; payment procedures; the means for determining eligible activities and delegating authority; and the effect of the chapter on prior grants.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 14 continue to exist. The rules are needed to implement Texas Water Code, §5.124, which authorizes the agency to award grants for any resource conservation or environmental protection purpose.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 14. Comments may be submitted to Joyce Spencer, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711- 3087 or faxed to (512) 239-4808. All comments should reference Rule Log Number 2003-058- 014-AD. Comments must be received by 5:00 p.m., January 5, 2004. For further information or questions concerning this proposal, please contact Debi Dyer, Policy and Regulations Division, at (512) 239-3972.

TRD-200308091
Kevin McCalla
Director, General Law Division
Texas Commission on Environmental Quality
Filed: November 24, 2003

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The Texas Commission on Environmental Quality (commission) files this notice of intention to review and proposes the readoption of Chapter 114, Control of Air Pollution from Motor Vehicles, without changes. Any updates, consistency issues, or other changes, if needed, will be addressed in a separate rulemaking.

This review of Chapter 114 is proposed in accordance with the requirements of Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the reasons for the rules continue to exist.

CHAPTER SUMMARY

Chapter 114 provides for the control of air pollution from motor vehicles. Subchapter A provides definitions for the chapter as a whole and for the various programs under the chapter. Subchapter B requires the maintenance of air pollution control equipment and devices on motor vehicles. Subchapter C, Division 1 provides regulations on the testing of exhaust emissions from motor vehicles in certain areas, including test requirements, test equipment maintenance and use, the early participation incentive program for reimbursements on equipment that is purchased early in some areas, and the fees for annual emissions tests; Division 2 provides rules for the Low Income Vehicle Repair Assistance, Retrofit, and Accelerated Vehicle Retirement Program. Subchapter D provides the requirements for the use of oxygenated fuels in certain areas. Subchapter E provides requirements for low emissions vehicle fleets. Subchapter F, Division 1 provides the rules for the Texas Mobile Emission Reduction Credit Program and the Texas Mobile Emission Reduction Credit Fund; Division 2 covers the voluntary accelerated vehicle retirement program. Subchapter G provides for transportation planning, including both transportation conformity and transportation control measures. Subchapter H requires the use of low emissions fuels in certain areas: Division 1 provides gasoline volatility requirements; and Division 2 provides low emission diesel standards. Subchapter I provides for the regulation of non-road engines in certain areas: Division 3 provides large spark-ignition engines; and Division 6 provides lawn service equipment operating restrictions. Subchapter J, Division 1 provides motor vehicle idling limitations in certain areas. Subchapter K provides for mobile source incentive programs: Division 1 covers the on-road diesel vehicle purchase or lease incentive program; Division 2 covers the light-duty motor vehicle purchase or lease incentive program; and Division 3 covers the diesel emissions reduction incentive program for on-road and non-road vehicles, which applies to certain areas. Subchapter L, Division 1 provides emissions standards for heavy-duty diesel engines, covering model year 2005 and thereafter.

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

The commission conducted a preliminary review and determined that the reasons for the rules in Chapter 114 continue to exist. The rules are needed to control the formation of ground-level ozone; to reduce the emissions of hazardous air pollutants; and to reduce emissions of oxides of nitrogen, volatile organic compounds, and other pollutants in affected and nonattainment counties. The rules implement Texas Water Code, §5.102, which establishes the commission's general authority necessary to carry out its jurisdiction; §5.103, which establishes the commission's general authority to adopt rules necessary to carry out its powers and duties; and §5.105, which establishes the commission's authority to set policy by rule. These rules also implement Texas Health and Safety Code, §382.002, which establishes the commission's purpose to safeguard the state air resources, consistent with the protection of public health, general welfare, and physical property; §382.011, which authorizes the commission to control the quality of the state air; §382.012, which establishes the commission's authority to prepare and develop a general comprehensive plan for the control of the state's air; §382.017, which establishes the commission's authority to adopt rules under the Texas Clean Air Act; §382.019, which establishes the commission's authority to adopt rules to control and reduce emissions from engines; Subchapter F, §§382.131 - 382.143, which establish the commission's authority to implement and administer an alternate fuels program; §382.208, which authorizes the commission to develop and implement transportation programs and other measures necessary to demonstrate and maintain attainment of national ambient air quality standards and to protect the public from exposure to hazardous air contaminants from motor vehicles; and Subchapter G,

§§382.201 - 382.216, which establish the commission's authority to establish, implement, and administer a program requiring emissions-related inspections of motor vehicles to be performed at inspection facilities consistent with the Federal Clean Air Act. These rules, specifically Subchapters K and L, implement Texas Health and Safety Code, Chapter 386, Texas Emissions Reduction Program, which establishes the commission's authority to implement and develop a grants program to reduce diesel emissions in affected and nonattainment counties.

In addition, Chapter 114 implements 42 United States Code (USC), Federal Clean Air Act, and corresponding federal regulations. Specifically, Subchapter C implements 42 USC, §7511a(c)(3), Enhanced Vehicle Inspection and Maintenance Program, and 40 Code of Federal Regulations (CFR) Part 51, Subpart S, Inspection Maintenance Program Requirements. Subchapter D specifically implements 42 USC, §7545(m), concerning oxygenated fuels, and 40 CFR Part 80, Regulation of Fuels and Fuel Additives. Subchapter E specifically implements 42 USC, §7511a(c)(4), Clean Fuel Vehicle Programs; 42 USC, §7586, Centrally Fueled Fleets; and 40 CFR Part 88, Clean Fuel Vehicles. Subchapter G implements 40 CFR Part 93, Subpart A, relating to Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded, or Approved Under Title 23 United States Code or the Federal Transit Laws, which establishes policy, criteria, and procedures to demonstrate and assure conformity of transportation planning activities with the state implementation plan.

PUBLIC COMMENT

This proposal is limited to the review in accordance with the requirements of Texas Government Code, §2001.039. The commission invites public comment on this preliminary review of the rules in Chapter 114. Comments may be submitted to Lola Brown, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. All comments should reference Rule Project Number 2004-019-114-AI. Comments must be received in writing by 5:00 p.m., January 5, 2004. For further information or questions concerning this proposal, please contact Joseph Thomas, Policy and Regulations Division, at (512) 239-4580.

TRD-200308131
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Texas Department of Transportation

Title 43, Part 1

Notice of Intention to Review: In accordance with §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Title 43 TAC, Part I, Chapter 3, Public Information; Chapter 4, Employment Practices; Chapter 6, State Infrastructure Bank; Chapter 9, Contract Management; Chapter 13, Materials Quality; Chapter 22, Use of State Property; Chapter 23, Travel Information; Chapter 25, Traffic Operations; and Chapter 29, Maintenance.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

In the October 10, 2003, issue of the *Texas Register*, the department proposed revisions due to legislation to the following sections of chapters in this proposed rule review:

Amendments to §9.18 and new §9.21 (28 TexReg 8861)

Amendments to §§25.406 (28 TexReg 8862)

Amendments to §§25.601-25.603, and new §25.604 (28 TexReg 8863)

Comment or questions regarding this rule review may be submitted in writing to Bob Jackson, Deputy General Counsel, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483, or by phone at (512) 463-8630.

TRD-200308141
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 25, 2003

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Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 33, Statement of Investment Objectives, Policies, and Guidelines of the Texas Permanent School Fund, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 33 in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8681).

The TEA finds that the reason for adopting 19 TAC Chapter 33 continues to exist. The TEA received no comments related to the rule review requirement. Modifications to rules in this chapter are necessary to implement changes reflecting the impact of the September 13, 2003, voter approval of Proposition 9, the constitutional amendment on the distribution of the Permanent School Fund. The TEA is proposing amendments to 19 TAC Chapter 33, which may be found in the Proposed Rules section of this issue. This concludes the review of 19 TAC Chapter 33.

TRD-200307921
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Filed: November 17, 2003

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 157, Hearings and Appeals, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 157 in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8681).

The TEA finds that the reason for adopting 19 TAC Chapter 157 continues to exist. The TEA received no comments related to the rule review requirement. Changes to rules in Chapter 157, Subchapter A, are necessary to bring the rules into alignment with current statute. The TEA is proposing revisions to 19 TAC Chapter 157, Subchapter A, which may be found in the Proposed Rules section of this issue. In addition, the TEA will propose amendments to Subchapters AA and BB in a future issue of the *Texas Register*. This concludes the review of 19 TAC Chapter 157.

TRD-200307922
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Filed: November 17, 2003

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The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 176, Driver Training Schools, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 176 in the October 3, 2003, issue of the *Texas Register* (28 TexReg 8681).

The TEA finds that the reason for adopting 19 TAC Chapter 176 continues to exist. The TEA received no comments related to the rule review requirement. Changes to rules in Chapter 176, Subchapter AA - DD, are necessary to update statutory references. The TEA will propose amendments to Subchapters AA - DD in a future issue of the *Texas Register*. This concludes the review of 19 TAC Chapter 176.

TRD-200307923
Cristina De La Fuente-Valadez
Manager, Policy Coordination
Texas Education Agency
Filed: November 17, 2003

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 4 TAC §17.51(19)

Figure: 4 TAC §17.51(20)

Figure: 4 TAC §17.51(22)

Figure: 4 TAC §17.51(23)

Figure: 16 TAC §25.185(f)(1)

MILITARY BASES STANDARD OFFER PROGRAM

Program Overview

Program Objectives

The goal of the Military Bases Standard Offer Program (Military Bases SOP) is to reduce energy consumption of military bases by five percent (5.0%), as compared to consumption levels in 2002, by January 1, 2005, as well as reduce energy costs for military bases.

Description

The Military Bases SOP provides for financial incentives for the retrofit installation of a wide range of measures that reduce customer energy costs, and reduce peak demand and/or save energy on military bases. Incentives are paid to energy efficiency service providers (EESPs), or Project Sponsors, on the basis of deemed savings, which are standardized savings values or formulas for a wide range of measures in representative building types. If deemed savings have not been established for a particular qualifying energy efficiency measure, then incentives may be paid on the basis of verified peak demand and/or energy savings using the International Performance Measurement and Verification Protocol (IPMVP). The Military Bases SOP will follow the guidelines set forth in P.U.C. SUBST. R. 25.185.

Program Pricing

Pricing Structure

Standard incentive prices are offered for demand savings (kilowatts or kW) and energy savings (kilowatt-hours or kWh). Incentive payments for military bases as customers shall not exceed $0.095 per kWh and $278.29 per kW, based on 50% of the avoided cost and a projected life of a measure of ten years. Projects that benefit hard-to-reach customers on military bases, such as military housing units, may be eligible for incentive payments up to $0.19 per kWh and $556.58 per kW. Projects conducted in an area that is in not in attainment for air emissions that is subject to the regulations of the Texas Commission on Environmental Quality (TCEQ) may be eligible for a 20% adder if the project meets the requirements of P.U.C. SUBST. R. 25.181(e)(2)(C). There is no maximum size or funding restriction on any project, other than the incentive budget established by the electric utility for the program.

Eligibility

Participant

Any entity meeting the application requirements and capable of installing eligible energy efficiency measures at a military facility is eligible to participate in the program as a Project Sponsor. A participating military base must receive electricity service provided by the sponsoring electric utility. Eligible EESPs may include:

- National or local energy service companies (ESCOs).
- National or local companies that provide energy-related services (*e.g.*, contracting) or products (*e.g.*, lighting, heating, ventilation, and air conditioning (HVAC) equipment).
- Retail electricity providers (REPs).
- Military bases.

To ensure that the program's incentive budget is allocated to projects that are likely to meet with success, all Project Sponsors will be required to demonstrate a commitment to fulfilling program objectives and competency in completing the proposed project. Project Sponsors will be required to submit the following information as part of the application process:

- A description of the Project Sponsor firm, including relevant experience, areas of expertise and references.
- A work plan that covers the design, implementation, operation, and management of the project (the amount of detail required in this work plan will vary with project size).
- Evidence of credit rating.
- Proof of applicable insurance, licenses and permits.

The utility administrator may waive these requirements if the program sponsor is an individual military base that installs measures in its own facilities. The utility administrators must adopt procedures to ensure compliance with P.U.C. SUBST. R. 25.185(g).

Project

A project is defined by a set of proposed or installed measures and estimated demand and energy savings included in a single application. Each project must result in a total estimated demand reduction of at least 20 kW. This limitation is included to ensure that projects contribute to the goal of reducing energy/peak demand and to minimize administrative costs. A utility may waive this requirement if the Project Sponsor is an individual military base that installs measures in its own facilities. This limitation may be revised based on the size of the total program budget.

Measure

The program does not specify eligible measures in order to provide energy service providers flexibility in packaging projects or services. EESPs may propose the inclusion of any measure in their project that meets the following requirements:

- Measure must produce savings through an increase in energy efficiency or a substitution of another energy source for electricity supplied through the transmission grid.
- Measure must generally be installed in a retrofit application. However, a utility may, at its discretion, permit new construction demand-side management (DSM) measures, including renewable energy DSM measures, completed in a new construction project, to qualify for an incentive.
- Measure must have a minimum useful life of 10 years.
- Renewable energy measures meeting the requirements of P.U.C. SUBST. R. 25.181, relating to the Energy Efficiency Goal, may qualify for an incentive.
- Measure must meet or exceed minimum equipment standards established by the Commission. If the Commission has not established such standards for the equipment included in a given project, any federal or state standard shall prevail.

The following measures are *excluded* from consideration in the program:

- Measures that involve plug loads.
- Measures that receive an incentive through any other energy efficiency program offered by the utility.
- Measures that rely on changes in customer behavior and require no capital investment.
- Measures not allowable under P.U.C. SUBST. R. 25.181, relating to the Energy Efficiency Goal, and P.U.C. SUBST. R. 25.185, relating to Energy Efficiency Incentive Program for Military Bases.

Measurement and Verification

Purpose

Measurement and verification (M&V) activities will be conducted for projects in order to verify incentive payments and project savings.

Responsibility

The Project Sponsor will be responsible for conducting all M&V activities of approved projects. The electric utility will conduct a review of M&V reports. If the utility anticipates that its involvement in the Project Sponsor's M&V activities will result in costs to the utility that exceed 5.0% of the incentive amount requested by the Project Sponsor, the utility is entitled to charge an application fee to the Project Sponsor. Such fee shall be designed to offset the utility's M&V-related costs.

Procedures

M&V procedures will vary in detail and rigor depending on the measures installed. For each installed measure, the chosen procedures will depend upon the predictability of equipment operation, the availability of evaluation data from previous programs, and the benefits of the chosen M&V approach relative to its cost.

Project-specific M&V procedures may be classified according to three distinct approaches that represent increasing levels of detail and rigor.

- Deemed savings: Savings values are stipulated based on engineering calculations using typical equipment characteristics and operating schedules developed for particular applications, without on-site testing or metering.
- Simple M&V: Savings values are based on engineering calculations using typical equipment characteristics and operating schedules developed for particular applications, with some short-term testing or simple long-term metering.
- Full M&V: Savings are estimated using a higher level of rigor than in the deemed savings or simple M&V approaches through the application of metering, billing analysis, or computer simulation.

An M&V plan will be required of each Project Sponsor that describes all measures to be installed, methods for calculating savings, and a schedule for conducting and reporting on M&V activities. The time required to complete M&V activities may range from less than a month up to 12 months.

If the Project Sponsor elects to pursue the "Full M&V" or "Simple M&V" options, it must follow the IPMVP.

With the consent of the electric utility, a Project Sponsor may elect to pursue either the "Full M&V" or "Simple M&V" options even if deemed savings estimates have been adopted by the Commission for the energy efficiency measures included in the EESP's project.

For renewable energy projects, the approach used to measure and verify energy and/or demand savings must comply with any Commission approved M&V protocol.

Program Process

Application

Potential Project Sponsors must complete a two-part application to participate in the program. The initial application identifies the proposed measures, project sites, estimated peak demand and/or energy savings, and estimated incentive payments. The electric utility may set a performance security requirement of up to 5.0% of a project's estimated incentive payment. Such performance security, if set by the electric utility, must be applied to each project application in a nondiscriminatory manner. Approval of the initial application will reserve funding for the project. Applications will be accepted on a first-come, first-served basis.

If the project meets eligibility criteria, the Project Sponsor will submit a final application that presents an appropriate study of the proposed project with estimates of incentive payments and an M&V plan. For smaller projects, the utility may waive the requirement for an engineering study. The final application must also include a letter of intent from all customers involved in the application.

Installation

Project Sponsors participating in the program will have a signed standard offer contract with the utility. The terms of the contract will be standard for all participants, and will include estimates of peak demand and/or energy savings along with a maximum incentive payment associated with the project. After a program contract is signed and baseline verification is complete, the Project Sponsor may install measures. Project Sponsors will be required to submit an installation report that documents the actual installation of measures. Project sites will be inspected by the program administrator (electric utility) to verify baseline and post-installation conditions.

Payment

After each project is installed, documented, and accepted, the Project Sponsor will receive an initial incentive payment that represents 40% of the total estimated incentive payment. After all M&V activities are complete, documented, and accepted, the Project Sponsor will receive the remaining incentive payment based on verified savings (up to 60% of the total estimated incentive payment).

If the project consists entirely of energy efficiency measures for which deemed savings have been approved by the Commission and the Project Sponsor wishes to be paid entirely on the basis of these deemed savings values, then the utility may provide a single incentive payment to the Project Sponsor upon completion of project installation, documentation, acceptance, and inspections.

Program Promotion

The Military Bases SOP design allows EESPs to sell projects to the military bases. The military bases are, however, under no obligation to enter into an agreement with an EESP to perform energy efficiency services, and may act as their own Project Sponsor.

The electric utility will conduct outreach for the program by providing complete program information and application materials, and by conducting workshops for potential Project Sponsors, particularly the military bases.

Figure: 31 TAC §364.32(a)(1)

APPENDIX 1A. SAMPLE FORM FOR WATER SERVICE AGREEMENT

AGREEMENT REGARDING WATER SERVICE FOR THE PROPOSED
_____ SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit:
The Utility is the governing board or owner of a retail public utility which supplies of drinking water known as _____.

The Subdivider is _____,
who is the owner, or the authorized agent of the owner, of a tract of land in _____
County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known as _____.

TERMS: This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to _____ County for its approval. The Subdivider plans to construct for the Subdivision a drinking water distribution system to be connected to the Utility's public water system. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the drinking water flow anticipated to be needed by the Subdivision under fully built-out conditions (the anticipated water flow) to be approximately _____ gallons daily.

The Utility covenants that it has or will have the ability to provide the anticipated water flow for at least thirty years, and that it will provide that water flow. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's water distribution system has been connected to the Utility's water supply system.

The Subdivider covenants that the water distribution system will be constructed as shown in the Plans and as provided for through the plat-approval process so that the residents of the lots of the Subdivision may receive drinking water service from the Utility. Upon completion of the water distribution system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the water distribution system.

The Subdivider has paid the Utility the sum of $ _____ which sum represents the total costs of water meters, water rights acquisition fees, and all membership or other fees associated with connecting the individual lots in the Subdivision to the Utility's water supply system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by _____ County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20 [~~19~~]____.

The Utility

By:_____
Printed Name:_____
Office or Position:_____
Date:_____

The Subdivider

By:_____
Printed Name:_____
Office or Position:_____
Date:_____

Figure: 31 TAC §364.33(a)(2)

APPENDIX 1B. SAMPLE FORM FOR WASTEWATER SERVICE AGREEMENT

AGREEMENT REGARDING WASTEWATER SERVICE FOR THE PROPOSED _____ SUBDIVISION

PARTIES: This Agreement is by and between the Utility and the Subdivider, to wit:
The Utility is the governing board or owner of a retail public utility which provides wastewater treatment and is known as _____.

The Subdivider is _____,
who is the owner, or the authorized agent of the owner, of a tract of land in _____ County, Texas, that has been proposed to be divided into a subdivision (the Subdivision) known as _____.

TERMS: This Agreement is entered into in partial satisfaction of requirements under the Texas Water Development Board's Economically Distressed Areas Program Model Subdivision Rules. The Subdivider has prepared a plat of the Subdivision for submission to _____ County for its approval. The Subdivider plans to construct for the Subdivision a wastewater collection system to be connected to the Utility's wastewater treatment system. Such wastewater will consist of domestic sewage, i.e., waterborne human waste and waste from domestic activities such as bathing, washing, and food preparation. The Utility has reviewed the plans for the Subdivision (the Plans) and has estimated the wastewater flow projected from the Subdivision under fully built-out conditions (the projected wastewater flow) to be approximately _____ gallons daily.

The Utility covenants that it has or will have the capacity to treat the projected wastewater flow, and that it will treat that wastewater flow for at least thirty years. These covenants will be in effect until thirty years after the plat of the Subdivision has been recorded and the Subdivision's wastewater collection system has been connected to the Utility's wastewater treatment plant.

The Subdivider covenants that the wastewater collection system will be constructed as shown in the Plans and as provided for through the plat approval process so that the residents of the lots of the Subdivision may receive wastewater treatment service from the Utility. Upon completion of the wastewater collection system and upon its approval and acceptance by the Utility, the Subdivider will convey to the Utility all right and title to the wastewater collection system.

Insert the following paragraph if the Utility imposes any fees for connection of individual lots to the Utility's wastewater collection and treatment system:
The Subdivider has paid the Utility the sum of $ _____ which sum represents the total costs of tap fees, capital recovery charges, and other fees associated with connecting the individual lots in the Subdivision to the Utility's wastewater collection and treatment system.

The above provisions notwithstanding, this Agreement shall no longer be in effect if the plat of the Subdivision is not approved by _____ County or by a municipality whose approval is required.

By affixing his or her signature to this Agreement, the person signing for the Utility warrants that he or she is authorized to sign this Agreement on behalf of the Utility. By affixing his or her signature to this Agreement, the person signing for the Subdivider warrants that he or she is authorized to sign this Agreement on behalf of the Subdivider.

This Agreement is effective on _____, 20 [~~19~~]___.

The Utility

By:_____
Printed Name:_____
Office or Position:_____
Date:_____

The Subdivider

By:_____
Printed Name:_____
Office or Position:_____
Date:_____

Figure: 31 TAC §364.54(a)

APPENDIX 2A: SUBDIVISION CONSTRUCTION AGREEMENT SAMPLE FORM

1. Parties. This Subdivision Construction Agreement (the Agreement) is by and between the County and the Subdivider. The County is _____ County, Texas, acting by and through its Commissioners Court, or authorized representative as designated by the Commissioners Court. The Subdivider is _____, who is the owner, or the authorized agent of owner, of a tract of land located within the geographic area and jurisdiction of the County.

2. Effective Date. This Agreement is effective on the date the County approves the final plat for the subdivision described in Paragraph 3 of this agreement (the Effective Date).

Recitals

3. Subdivider is the owner of the land included in the proposed final subdivision plat of the _____ subdivision, as shown in County's File Number (the Subdivision) and more particularly described by the metes and bounds description attached and incorporated into this Agreement as Exhibit A (the Property); and

4. Subdivider seeks authorization from the County to subdivide the Property in accordance with the requirements imposed by Texas statute and the County's ordinances, regulations, and other requirements; and

5. County ordinances require the completion of various improvements in connection with the development of the Subdivision to protect the health, safety, and general welfare of the community and to limit the harmful effects of substandard subdivisions; and

6. The purpose of this Agreement is to protect the County from the expense of completing subdivision improvements required to be installed by the Subdivider; and

7. This agreement is authorized by and consistent with state law and the County's ordinances, regulations, and other requirements governing development of a subdivision.

IN CONSIDERATION of the foregoing recitals and the mutual covenants, promises, and obligations by the parties set forth in this Agreement, the parties agree as follows:

Subdivider's Obligations

8. Improvements. The Subdivider agrees to construct and install, at Subdivider's expense, all subdivision improvements required to comply with County orders, ordinances, regulations, and policies governing subdivision approval, specifically including without limitation those improvements listed on Exhibit B attached and incorporated by reference into this Agreement (collectively, the Improvements, any one of which is an Improvement). All Improvements shall be constructed in conformity to the County's requirements, procedures, and specifications, pursuant to construction plans, permits, and specifications approved by the County prior to commencement of construction, and subject to inspection, certification, and acceptance by the County.

9. Completion. Unless a different time period is specified for a particular Improvement in Exhibit B, construction of all the Improvements shall be completed no later than three (3) years after the Effective Date (the Completion Date); provided, however, that if the Subdivider or the Issuer delivers to the County no later than the Completion Date a substitute Letter of Credit satisfying the criteria established by Paragraph 11 and which has an expiration date no earlier than one year from the Completion Date, then the Completion Date shall be extended to the expiration date of that substitute Letter of Credit or any subsequent substitute Letter of Credit provided in accordance with this Paragraph. Upon completion of each of the Improvements, the Subdivider agrees to provide to the County a complete set of construction plans for the Improvements, certified "as built" by the engineer responsible for preparing the approved construction plans and specifications.

10. Warranty. The Subdivider warrants the Improvements constructed by Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees will be free from defects for a period of one (l) year from the date the County accepts the dedication of a completed Improvement or group of Improvements (the Warranty Period), as such Improvement or group of Improvements is separately identified and listed on Exhibit B, except the Subdivider does not warrant the Improvements for defects caused by events outside the control of the Subdivider or the Subdivider's agents, contractors, employees, tenants, or licensees. The Subdivider agrees to repair any damage to the Improvements before and during the Warranty Period due to private construction-related activities. As a condition of the County's acceptance of dedication of any of the Improvements, the County may require the Subdivider to post a maintenance bond or other financial security acceptable to the County to secure the warranty established by this Agreement. If the Improvements have been completed but not accepted, and neither the Subdivider nor Issuer is then in default under this Agreement or the Letter of Credit, at the written request of the Subdivider or the Issuer the County shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to an amount equal to the face amount of the maintenance bond or other financial security acceptable to the County.

11. Security. To secure the performance of Subdivider's obligations under this Agreement, Subdivider agrees to provide adequate financial guarantees of performance in the form of a surety bond acceptable to the County, a cash deposit to be held by the County in escrow, or an irrevocable letter of credit in the amount of _____ Dollars ($_____) (the Stated Amount), which amount is the estimated total cost of constructing each of the Improvements as shown on Exhibit B. If a letter of credit is provided pursuant to this Agreement, it shall be in a standard form acceptable to the County, shall have an expiration date no earlier than one year from the date of its issuance, and shall be issued by a financial institution having a rating equivalent to the minimum acceptable rating established under the County's financial institution rating system in effect at the time the initial letter of credit is issued pursuant to this Agreement (the Issuer). During the term of this Agreement and subject to the terms of Paragraph 22 of this Agreement, the County may revise the standard form letter of credit it reasonably considers acceptable and necessary to secure the performance of Subdivider's obligations under this agreement. A letter of credit satisfying the criteria of this Paragraph (and any substitute or confirming letter of credit) is referenced to in this agreement as the "Letter of Credit."

12. Reduction In Letter of Credit. After the acceptance of any Improvement, the amount which the County is entitled to draw on the Letter of Credit shall be reduced by an amount equal to ninety percent (90%) of the Quoted cost of the accepted Improvement, as shown on Exhibit B. Upon completion of an Improvement, at the written request of Subdivider or Issuer, and if neither the Subdivider nor Issuer is then in default under this agreement or the Letter of Credit, the County shall complete, execute, and deliver to the Issuer a reduction letter verifying the acceptance of the Improvement and documenting that the Stated Amount has been reduced by stating the balance of the Stated Amount remaining after the reduction required by the first sentence of this Paragraph. No later than sixty (60) days after its receipt of a written request to reduce the Stated Amount submitted by the Subdivider or the Issuer, the County shall determine the Estimated Remaining Cost and shall complete, execute, and deliver to the Issuer a reduction letter documenting that the Stated Amount has been reduced to the Estimated Remaining Cost if the County determines the Stated Amount exceeds the Estimated Remaining Cost. Notwithstanding the preceding sentence, the County shall not be required to authorize reductions in the Stated Amount more frequently than every ninety (90) days. As used in this Paragraph, "Estimated Remaining Cost" means the amount the County estimates to be the cost of completing all Improvements which are incomplete as of the time of such estimate.

County's Obligations

13. Inspection and Certificate. The County agrees to inspect Improvements during and at the completion of construction and, if completed in accordance with the standards and specifications for such Improvements, to certify the Improvements as being in compliance with County standards and specifications. The inspections and certifications will be conducted in accordance with standard County policies and requirements. The Subdivider grants the County, its agents, employees, officers, and contractors an easement and license to enter the Property to perform such inspections as it deems appropriate.

14. Notice of Defect. The County will provide timely notice to the Subdivider whenever inspection reveals that an Improvement is not constructed or completed in accordance with the standards and specifications for health or safety, and <u>if</u> the notice of defect includes a statement explaining why the defect creates such immediate and substantial harm, the cure period may be shortened to no less than five (5) days and the County may declare a default under this Agreement if not satisfied that the defect is cured after the cure period. Any cure period should be reasonable in relation to the nature of the default.

15. Use of Proceeds. The County will disburse funds drawn under the Letter of Credit only for the purposes of completing the Improvements in conformance with the County's requirements and specifications for the Improvements, or to correct defects in or failures of the Improvements. The Subdivider has no claim or rights under this Agreement to funds drawn under the Letter of Credit or any accrued interest earned on the funds. All funds obtained by the County pursuant to one or more draws under the Letter of Credit shall be maintained by the County in an interest bearing account or accounts until such funds, together with accrued interest thereon (the Escrowed Funds), are disbursed by the County. The County may <u>disburse</u> [~~disperse~~] all or portions of the Escrowed Funds as Improvements are completed and accepted by the County, or in accordance with the terms of a written construction contract between the County and a third party for the construction of Improvements. Escrowed Funds not used or held by the County for

the purpose of completing an Improvement or correcting defects in or failures of an Improvement, together with interest accrued thereon, shall be paid by the County to the Issuer of the Letter of Credit no later than sixty (60) days following the County's acceptance of the Improvement or its decision not to complete the Improvement using Escrowed Funds, whichever date is earlier.

16. Return of Excess Escrowed Funds. No later than sixty (60) days after its receipt of a written request from the Subdivider or the Issuer to return Excess Escrowed Funds to the Issuer, the County shall disburse to the Issuer from the Escrowed Funds all Excess Escrowed Funds. For purposes of this Paragraph, "Excess Escrowed Funds" means the amount of Escrowed Funds exceeding one hundred ten percent (110%) of the estimated cost of constructing Improvements the County intends to construct but which have not been accepted, as such cost is shown on Exhibit B. Notwithstanding the first sentence in this Paragraph, the County shall not be required to disburse Excess Escrowed Funds more frequently than every ninety (90) days.

17. Cost Participation by County. If the County and Subdivider agree the County will participate in the expense of installing any of the Improvements, the respective benefits and obligations of the parties shall be governed by the terms of a Community Facilities Construction Agreement executed by the parties thereto, and the terms of that agreement shall control to the extent of any inconsistency with this Agreement.

18. Conditions of Draw on Security The County may draw upon any financial guarantee posted in accordance with Paragraph 11 upon the occurrence of one or more of the following events:
(a) Subdivider's failure to construct the Improvements in accordance with Paragraph 8 of this Agreement;
(b) Subdivider's failure to renew or replace the Letter of Credit at least forty-five (45) days prior to the expiration date of the Letter of Credit;
(c) Subdivider's failure to replace or confirm the Letter of Credit if the Issuer fails to maintain the minimum rating acceptable to the County, in accordance with Paragraph 11 of this Agreement; or
(d) Issuer's acquisition of the Property or a portion of the Property, through foreclosure or an assignment or conveyance in lieu of foreclosure.

The County shall provide written notice of the occurrence of one or more of the above events to the Subdivider, with a copy provided to the Issuer. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraph (a), the County shall provide notice to the Subdivider and the Issuer of the specific default and the notice shall include a statement that the County intends to perform some or all of Subdivider's obligations under Paragraph 8 for specified Improvements if the failure is not cured. The notice with respect to a default under subparagraph (a) shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit, unless, in the reasonable opinion of the County, the failure creates an immediate and substantial harm to the public health or safety, in which case the notice shall state why the failure creates an immediate and substantial harm to the public health or safety, and shall be given no less than five (5) days before presentation of a draft on the Letter of Credit. In the event of a draw based on subparagraph (a), the County shall be entitled to draw in the amount it considers necessary to perform Subdivider's obligations under Paragraph

8, up to the amount allocated according to Exhibit B for any Improvement it states its intent to construct or complete in accordance with the standards and specifications for such improvement. The subdivider hereby grants to the County, its successors, assigns, agents, contractors, and employees, a nonexclusive right and easement to enter the Property for the purposes of constructing, maintaining, and repairing such Improvements. Where a Letter of Credit has been provided as the financial guarantee, with respect to an event described by subparagraphs (b), (c), or (d), the notice shall be given no less than twenty (20) days before presentation of a draft on the Letter of Credit. In lieu of honoring a draft based on an event described in subparagraphs (b) or (c), the Issuer or the Subdivider may deliver to the County a substitute Letter of Credit if the event is described by subparagraph (b) or a substitute or confirming Letter of Credit if the event is described by subparagraph (c). If the Issuer has acquired all or a portion of the Property through foreclosure or an assignment or conveyance in lieu of foreclosure, in lieu of honoring a draft based on an event described in subparagraph (d), the Issuer may deliver to the County a substitute or confirming Letter of Credit.

19. Procedures for Drawing on the Letter of Credit. The County may draw upon the Letter of Credit in accordance with Paragraph 18 by submitting a draft to the Issuer in compliance with the terms of the Letter of Credit governing such draft. The Letter of Credit must be surrendered upon presentation of any draft which exhausts the Stated Amount of such Letter of Credit. The County may not draft under a Letter of Credit unless it has substantially complied with all its obligations to the Issuer under this Agreement and has properly completed and executed the draft in strict accordance with the terms of the Letter of Credit.

20. Measure of Damages. The measure of damages for breach of this Agreement by the Subdivider is the reasonable cost of completing the Improvements in conformance with the County's requirements, procedures, and specifications. For Improvements upon which construction has not begun, the estimated cost of the Improvements shown on Exhibit B will be prima facie evidence of the minimum cost of completion; however, neither that amount or the amount of the Letter of Credit establishes the maximum amount of the Subdivider's liability.

21. Remedies. The remedies available to the County, the Subdivider, and Issuer under this Agreement and the laws of Texas are cumulative in nature.

22. Provisions for the Benefit of Issuer. The provisions of Paragraphs 9, 10, 11, 12, 15, 16, 18, 19, 21, 22, 23, 25, 26, 27, 28, 29, 30, 32, and 36 of this Agreement for the benefit of the Issuer may not be modified, released, diminished, or impaired by the parties without the prior written consent of the Issuer.

23. Third Party Rights. No person or entity who or which is not a party to this Agreement shall have any right of action under this Agreement, nor shall any such person or entity other than the County (including without limitation a trustee in bankruptcy) have any interest in or claim to funds drawn on the Letter of Credit and held in escrow by the County in accordance with this Agreement. Notwithstanding the preceding sentence, the Issuer shall have a right of action to enforce any provision of this Agreement where the Issuer is specifically named as a beneficiary of such provision pursuant to Paragraph 22.

24. Indemnification. The Subdivider hereby expressly agrees to indemnify and hold the County harmless from and against all claims, demands, costs, and liability of every kind and nature, including reasonable attorney's fees for the defense of such claims and demands, arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act or negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements. The Subdivider further agrees to aid and defend the County if the County is named as a defendant in an action arising from any breach on the part of Subdivider of any provision in this Agreement, or from any act of negligence of Subdivider or Subdivider's agents, contractors, employees, tenants, or licensees in the construction of the Improvements, except where such suit is brought by the Subdivider. The Subdivider is not an employee or agent of the County. Notwithstanding anything to the contrary contained in this agreement, the Subdivider does not agree to indemnify and hold the County harmless from any claims, demands, costs, or liabilities arising from any act or negligence of the County, its agents, contractors, employees, tenants, or licensees.

25. No Waiver. No waiver of any provision of this Agreement will be deemed or constitute a waiver of any other provision, nor will it be deemed or constitute continuing waiver unless expressly provided for by a written amendment to this Agreement; nor will the waiver of any default under this agreement be deemed a waiver of any subsequent defaults of the same type. The failure at any time to enforce this Agreement or covenant by the County, the Subdivider, or the Issuer, their heirs, successors or assigns, whether any violations thereof are known or not, shall not constitute a waiver or estoppel of the right to do so.

26. Attorney's Fees. Should either party or the Issuer, to the extent Issuer is named as specific beneficiary, be required to resort to litigation to enforce the terms of this agreement, the prevailing party, plaintiff or defendant, shall be entitled to recover its costs, including reasonable attorney's fees, court costs, and expert witness fees, from the other party. If the court awards relief to both parties, each will bear its own costs in their entirety.

27. Assignability. The benefits and burdens of this Agreement are personal obligations of the Subdivider and also are binding on the heirs, successors, and assigns of the Subdivider. The Subdivider's obligations under this Agreement may not be assigned without the express written approval of the County. The County's written approval may not be withheld if the Subdivider's assignee explicitly assumes all obligations of the Subdivider under this Agreement and has posted the required security. The County agrees to release or reduce, as appropriate, the Letter of Credit provided by the Subdivider if it accepts substitute security for all or any portion of the Improvements. The County, in its sole discretion, may assign some or all of its rights under this Agreement, and any such assignment shall be effective upon notice to the Subdivider and the Issuer.

28. Expiration. This Agreement shall terminate upon the expiration of the approval of the proposed final plat of the Subdivision or if the Subdivision is vacated by the Subdivider.

29. Notice. Any notice required or permitted by this Agreement is effective when personally delivered in writing or three (3) days after notice is deposited with the U.S. Postal Service, postage prepaid, certified with return receipt requested, and addressed as follows:

if to Subdivider:
Attn:_____
Printed Name:_____
Office or Position:_____
Address:_____
_____

if to County:
Attn:_____
Printed Name:_____
Office or Position:_____
Address:_____
_____

if to the Issuer: at Issuer's address shown on the Letter of Credit.

The parties may, from time to time, change their respective addresses listed above to any other location in the United States for the purpose of notice under this Agreement. A party's change of address shall be effective when notice of the change is provided to the other party in accordance with the provisions of this Paragraph.

30. Severability. If any part, term, or provision of this Agreement is held by the courts to be illegal, invalid, or otherwise unenforceable, such illegality, invalidity, or enforceability shall not affect the validity of any other part, term, or provision, and the rights of the parities will be construed as if the part, term, or provision vas never part of this Agreement.

31. Personal Jurisdiction and Venue. Personal jurisdiction and venue for any civil action commenced by either party to this Agreement or the Issuer, whether arising out of or relating to the Agreement or the Letter of Credit, will be deemed to be proper only if such action is commenced in District Court for _____ County, Texas, or the United States District Court for the _____ District of Texas, _____ Division. The Subdivider expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal. The Issuer, by providing a Letter of Credit pursuant to the terms of-this Agreement, expressly waives any right to bring such an action in or to remove such an action to any other court, whether state or federal.

32. Release Upon Completion. Upon acceptance of all Improvements, the County agrees: (a) to complete, execute and deliver to the Subdivider and the Issuer a release in recordable form releasing the Subdivider and Subdivider's heirs, successors and assigns, and the Property from all provisions of this Agreement except those contained in Paragraph 10, and (b) to return to the Issuer the Letter of Credit and any Escrowed Funds not expended or obligated by the County for the completion of the Improvements.

33. Captions Immaterial. The numbering, order, and captions or headings of the paragraphs of this agreement are for convenience only and shall not be considered in construing this agreement.

34. Entire Agreement. This Agreement contains the entire agreement between the parties and correctly sets forth the rights, duties, and obligations of each to the other as of the Effective Date. Any oral representations or modifications concerning this Agreement shall be of no force or effect excepting a subsequent written modification executed by both parties.

35. Authorization to Complete Blanks. By signing and delivering this agreement to the appropriate official of the County, the Subdivider authorizes completion of this Agreement by filling in the Effective Date below.

36. Binding Agreement. The execution and delivery of this agreement and the performance of the transactions contemplated thereby have been duly authorized by all necessary corporate and governmental action of the County. This Agreement has been duly executed and delivered by each party, and constitutes a legal, valid, and binding obligation of each party enforceable in accordance with the terms as of the effective Date. These representations and agreements are for the benefit of the Issuer, and have been relied on by the Issuer in issuing the Letter of Credit.

EXECUTED by the parties to be effective as of the _____ day of _____, 20 [~~19~~] ___.

_____ _____

County Official Subdivider

[SIGNATURES OF THE PARTIES TO BE ACKNOWLEDGED]

EXHIBIT A: METES AND BOUNDS DESCRIPTION OF PROPERTY

EXHIBIT B: SUBDIVISION IMPROVEMENTS

Subdivision Improvements. Subdivider and County agree the following improvements are required in connection with the approval and development of the Subdivision (collectively, the Subdivision Improvements). Subdivider agrees to deliver a financial guarantee acceptable in form and substance to the County in an amount equal to the Estimated Cost of Completion listed below, as follows:

Description of Improvement(s) Estimated Cost of Completion

a)

b)

c)

Figure: 31 TAC §364.54(c)(3)

APPENDIX 2B. IRREVOCABLE LETTER OF CREDIT SAMPLE FORM

IRREVOCABLE LETTER OF CREDIT NO.

TO: , Texas

DATE: , 20 [~~19~~]

We hereby authorize you to draw at sight on [NAME AND LOCATION OF BANK] , for the account of [NAME OF CUSTOMER] (the Customer), up to the aggregate amount of _____ DOLLARS ($_____) (the Stated Amount) available by our draft, accompanied by a certification by the county judge, any county commissioner, or the county treasurer that the following condition exists:

AA Condition of Draw exists under Subdivision Construction Agreement dated_____, 20 [~~199~~]__, by and between Subdivider and the County of _____ (the Agreement). County is in substantial compliance with the terms of said Agreement and has calculated the amount of this draft in accordance with the terms of the Agreement.

Drafts must be drawn and presented by or on [EXPIRATION DATE] by the close of business of the Issuer of this credit and must specify the date and number of this credit. Drafts will be honored within five calendar days of presentment. We hereby engage all drawers that drafts drawn and presented in accordance with this credit shall be duly honored. Partial draws are permitted and the letter of credit shall be reduced by the amount of such partial draws as well as by any reduction letters authorized by the County. The sum of such partial draws shall on no account exceed the Stated Amount of this credit, and upon any draw or reduction letter which exhausts this credit, the original of this credit will be surrendered to us.

Except as expressly stated, this credit shall be subject to the Uniform Customs and Practice for Documentary Credits (1993 [~~1983~~] Revision), International Chamber of Commerce (Publication No. 500 [~~400~~]).

This credit is irrevocable prior to its expiration date unless both parties consent to revocation in writing.

Address of Issuer:

Signature of Issuer's Authorized Officer

Printed Name:
Title:

Figure: 37 TAC §28.127(b)

TEXAS DEPARTMENT OF PUBLIC SAFETY

LABORATORY ACCREDITATION APPLICATION FORM
(Required by 37 TAC, Chapter 28 Subchapter H)

☐ New Application ☐ Provisional Application ☐ Reapplication ☐ Revision

Organization Name _____

Laboratory Name _____

Government (☐Federal ☐State ☐County ☐City ☐Regional) Private ☐

Street Address _____

City _____ State _____ Country _____ Zip Code _____

Laboratory Director

Name _____ Title _____

Telephone _____ Fax _____ E-mail _____

Point of Contact (if other than Laboratory Director)

Name _____ Title _____

Telephone _____ Fax _____ E-mail _____

Source of Recognized Accreditation: ☐ ASCLD/LAB ☐ ABFT ☐ NFSTC

Specific Disciplines for which DPS Accreditation is sought:

Disciplines Required by Statute to be Accredited:

☐ Controlled Substances	☐ Toxicology	☐ Biology
☐ Firearm/Toolmark	☐ Questioned Documents	☐ Trace Evidence
☐ Other _____		

Optional Disciplines:

☐ Latent Prints	☐ Other _____

Specific Limitations (please list):

Authorization to Release Information

The recognized accrediting body has permission to release a copy of any information in its files regarding the accreditation of the laboratory to the Texas Department of Public Safety Crime Laboratory. This authorization will remain in effect until the recognized accrediting body is notified in writing to rescind such permission by the Texas Department of Public Safety Crime Laboratory and the Laboratory Director of this laboratory.

Laboratory Director _____ _____ _____

Print Name *Signature* *Date Signed*

Attach the following: each accreditation certificate, notification letter, and other relevant document.

LAB- 5 Rev. 01 (12/2003)

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Alcoholic Beverage Commission

Enforcing Underage Drinking Laws 2004 - Request for Applications

The Texas Alcoholic Beverage Commission (TABC) is soliciting applications for projects that improve or promote the enforcement of underage drinking laws. TABC is able to award funding to state agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities through the Department of Justice's (DOJ) Office of Juvenile Justice and Delinquency Prevention (OJJDP)' s Enforcing the Underage Drinking Laws (EUDL) program.

PROGRAM ANNOUNCEMENT

Underage drinking is a serious problem that requires continuous attention from the prevention, education, and enforcement fields. While the State of Texas currently allocates resources to address underage drinking, more needs to be done. The Texas Alcoholic Beverage Commission (TABC)'s primary goal for participating in the Enforcing the Underage Drinking Laws (EUDL) Program is to increase the State's ability to effectively enforce underage drinking laws and to prevent youth access to and illegal use of alcohol.

Through this competitive RFA, applicants may request funds for a variety of projects that help meet this goal. While this program may fund any innovative underage drinking prevention program or alcohol age-law enforcement effort, TABC would like to fund programs that address one or more of the following problems:

* underage drinking in rural areas;

* underage drinking on and around college campuses; and/or the

* availability of alcohol to youth through a variety of sources, including a focus on alcohol availability from strangers, siblings, friends and parents-referred to as "third-party transactions."

Project applications should also clearly explain how one or both of the following components will be incorporated into the program:

* partnerships with multiple aspects of the community

* partnerships with youth in planning and carrying out program activities

Applicants are encouraged to pursue initiatives that involve environmental approaches. Environmental approaches include efforts that seek to change policy; target enforcement efforts to identified problems; change the general attitudes of the public and retailers about underage drinking; and/or address retailer or other community-based practices encouraging underage drinking-to name a few.

Funding preference will be given to applicant programs that are currently operating, but could expand efforts with additional funds.

GENERAL REQUIREMENTS

Applications must present a documented underage drinking problem and clearly detail a comprehensive approach to addressing the problem. This approach should involve several education, prevention, enforcement and prosecution-based strategies, and include many key community players. Applicants must explain why additional resources are needed and how grant funds will be used to contribute to the implementation of the approach.

COORDINATION Grant applications must describe how the project will be coordinated with existing programs and policies, with particular attention to documenting that grant funds will be used to create new projects or expand existing ones. Preference will be given to projects that outline a plan to continue efforts should future year funding not be available.

EVALUATION

Grant applications must include measurable goals with baseline data (data for the year before the grant). Actual results for each goal will be compared with baseline data. Grantees must report quarterly to the TABC on progress report forms provided by the agency.

ELIGIBLE APPLICANTS

State agencies, local units of government (cities, counties, school districts), Native American tribal governments, nonprofit corporations, and colleges and universities are eligible to apply for the TABC grants under the EUDL fund. Applicants may provide services directly or under contract with other cities, counties, school districts, private companies, or non-profit organizations. Colleges and universities that apply must address how they will coordinate project efforts with the surrounding community.

AMOUNT OF EACH GRANT

Average grant awards will range from $20,000 to $70,000 per year. Applicants should not request funding in excess of $100,000. In selecting applications for grant awards, the TABC will try to balance funding throughout the state and between focus areas-subject to the quality of applications received, the demonstrated problem and necessity of additional resources, and the results of competitive scoring. FUNDS WILL BE AVAILABLE ON A REIMBURSEMENT BASIS ONLY.

GRANT PERIOD Grant-funded projects must begin on June 1, 2004. Grants shall be awarded for a project period of twelve months, from June 1, 2004 through May 31, 2005. Although a project extension may be requested, grantees should not anticipate an extension in their project plan.

MATCHING FUNDS

Funded applicants must provide a 25 percent project "match" either by cash contribution or the value equivalent of in-kind contributions.

NON-SUPPLANTING REQUIREMENT

Federal funds shall not be used to supplant state or local funds and shall only be used to start new initiatives or expand existing programs.

CONSTRUCTION COSTS

Land acquisition and construction costs are ineligible.

EQUIPMENT PURCHASES

Equipment purchases are ineligible. Equipment rental may be approved.

CONTINUATION FUNDING POLICY

Grants will be awarded for a period of one year. Applicants may apply for continuation funding in subsequent years, subject to the availability of federal funds.

REPORTS

Grantees must submit quarterly progress reports and financial expenditure reports. TABC will supply the necessary forms and instructions following grant awards. Failure to submit reports on time will result in a financial hold on grant funds until the reports are submitted. GRANTS MAY BE TERMINATED IF GUIDELINES ARE NOT MET.

DEADLINE FOR SUBMISSION

Original applications must be mailed to TABC no later than 5:00 P.M. BY TUESDAY, FEBRUARY 10, 2004. Faxed, e-mailed or incomplete applications will not be accepted.

TEXAS REVIEW AND COMMENT SYSTEM

A copy of each grant application must be submitted to the appropriate Regional Council of Governments (COG) or to the State Single Point of Contact (SPOC) for TRACS review. The applicant is responsible for this submission and for submitting a copy of the TRACS review letter to TABC.

SELECTION PROCESS

Applications will be scored competitively, using the scoring instrument included in the application kit. All funding decisions related to these grants are fully within the discretion of the TABC Administrator or his designee. TABC informs the applicant of this decision through either an award or denial letter. Applicants must not make any assumptions regarding funding decisions until they have received official written notification of award or denial that is signed by either the TABC Administrator or the Grant Programs Administrator. Funding will be awarded by April 30, 2004. All applicants should plan to attend a grant delivery meeting in May 2004 at TABC Headquarters in Austin.

PROGRAM AUTHORIZATION

This block grant funding is authorized under the Enforcing the Underage Drinking Laws Program, authorized by the Omnibus Consolidated and Emergency Supplemental Appropriation Act of 1999, Public Law 105-277, FY 2001 Appropriations Act, Public Law 106-553.

FOR FURTHER INFORMATION

If you have any questions, contact the Grants and Planning Section, TABC, at 512/ 206-3430 or e-mail your information request to grants@tabc.state.tx.us

TRD-200308140
Lou Bright
General Counsel
Texas Alcoholic Beverage Commission
Filed: November 25, 2003

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Ark-Tex Council of Governments

ATCOG Applies for Brownfields Assessment Grant

ATCOG Applies for Brownfields Assessment Grant The Ark-Tex Council of Govenments (ATCOG) intends to apply for a Brownfields Assessment Grant funded through the Environmental Protection Agency. This assessment will determine what properties in the ATCOG region are considered brownfields and will determine what steps are necessary to make the properties functional. The goal is to clean up contaminated properties and utilize them again. A brownfield site is defined as real property, the expansion, redevelopment, or reuse of which may be complicated by the presence of a hazardous substance, pollutant, or contaminant, as defined in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980§ 101 (39), as amended (CERCLA). The law further defines the term "brownfield site" to include a site that "is contaminated by a controlled substance. . .; is contaminated by petroleum or a petroleum product excluded from the definition of 'hazardous substance'. . .; is mine-scarred land.

TRD-200308157
Diane Atkinson
Environmental Resource Planner
Ark-Tex Council of Governments
Filed: November 26, 2003

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of November 14, 2003, through November 20, 2003. The public comment period for these projects will close at 5:00 p.m. on December 29, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Atofina Petrochemicals, Inc.; Location: The project is located in the Neches River, at the intersection of Highway 366 and 32nd Street, in Port Arthur, Jefferson County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Port Arthur North, Texas. Approximate UTM Coordinates: Zone 15; Easting: 415116; Northing: 3316754. Project Description: The applicant proposes to construct a new 9,553-square-foot barge docking facility to replace an existing docking platform, which will be removed. The proposed docking facility will include two 70-foot by 32-foot docking berths, connected to a 26-foot by 26-foot control room by a 580-foot by 3-foot pedestrian platform. In addition, three pedestrian walkways are proposed, connecting the shoreline to the docking platforms and the control house.

Five new dolphin pilings will be placed in front of the proposed docking platforms. Depth along the proposed structure ranges from 0 feet at the shoreline to -32 feet mean high water at the terminus of the proposed structure. No wetlands will be impacted by the proposed project. CCC Project No.: 03-0372-F1; Type of Application: U.S.A.C.E. permit application #23217 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Spinnaker Exploration Company, L.L.C.; Location: The proposed project is located approximately 15 miles southeast of the

Texas coastline in the Gulf of Mexico, Galveston Anchorage Area, OCS Block 210, offshore Texas. Using North American Datum 27, Texas South Central Zone, the XY Coordinates for the proposed Well No. 001 and Well No. 002 are X=3,402,095.81'; Y=498,460.00'. Project Description: The applicant proposes to install, operate, and maintain a jack-up rig, typical well protector and appurtenant structures and equipment necessary for oil and gas exploration and production operations for the OCS-G-25523 Well No. 001 and 002 in OCS Block 210. No dredging or fill activities are required for the proposed project. There are no known structures within a 2-mile radius of the proposed location. The water depth at the proposed project site is approximately 58-feet-deep. CCC Project No.: 03-0377-F1; Type of Application: U.S.A.C.E. permit application #23232 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Texas Department of Transportation; Location: The proposed project is located on the Brazos River, mile 22.78, on SH322/FM521, in Brazoria County, Texas. Project Description: The proposed project consists of constructing a steel plate girder bridge to replace the existing historic structure on essentially the same alignment. The proposed bridge will be constructed approximately 25.5 feet downstream of the existing bridge. The existing Union Pacific swing span bridge is approximately 225 feet downstream of the existing bridge. Texas Department of Transportation plans to preserve and rehabilitate the existing historic bridge for future pedestrian and bicycle use. The new facility will be 3,787 feet in length and 86.26 feet wide. The roadway will consist of three 12-foot travel lanes southbound and two 12-foot travel lanes northbound. The bridge will have two 10-foot outside shoulders and no inside shoulders. The project will consist of pre-stressed concrete I-beam sections except at the bridge and railroad overpasses where the bridge and overpass will be steel plate girder structures. The bridge will contain 26 bents, including two abutments. The horizontal clearance of the new bridge will be 345 feet between piers.

The vertical clearance of the new bridge will be 39.82 feet above mean high water, elevation 4.6 feet National Geodetic Vertical Datum. CCC Project No.: 03-0378-F1; Type of Application: U.S.Coast Guard. permit application #CGD8-17-03 is being evaluated as a Section 9 Bridge Permit (33 U.S.C.G Chapter 11 Subchapter 525).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at 512/475-0680.

TRD-200308163
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: November 26, 2003

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Comptroller of Public Accounts

Notice of Contract Awards

Pursuant to Chapter 403, Texas Government Code, and Chapter 2254, Subchapter A, Texas Government Code; and Chapters 72 - 75, Property Code, the Comptroller of Public Accounts (Comptroller) announces the following notice of contract awards for providing professional unclaimed property audit services.

The Notice of Request for Proposals (RFP #160b) was published in the August 8, 2003, issue of the *Texas Register* (28 TexReg 6334).

Contracts were awarded to:

ACS Unclaimed Property Clearinghouse, Inc., 160 Franklin Street, 11th Floor, Boston Massachusetts 02110. The term of the contract is November 7, 2003 through August 31, 2004.

Audit Services, US, LLC, 1880 MacKenzie Drive, Suite 207, Columbus, Ohio 43220. The term of the contract is November 20, 2003 through August 31, 2004.

Centerpoint Healthcare Management Services, Inc., 10901 Roosevelt Boulevard North, Suite 1100C, St. Petersburg, Florida 33716. The term of the contract is November 19, 2003 through August 31, 2004.

The total amount of each contract is 12% of cash value of net unclaimed property received by Comptroller as a result of an audit.

TRD-200308124
William Clay Harris
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: November 25, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in 303.003, 303.009, and 304.003, Tex. Fin. Code.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 11/24/03 - 11/30/03 is 18% for Consumer [1]/Agricultural/Commercial [2]/credit thru $250,000.

The weekly ceiling as prescribed by Sec. 303.003 and Sec. 303.009 for the period of 11/24/03 - 11/30/03 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 12/01/03 - 12/31/03 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by Sec. 304.003 for the period of 12/01/03 - 12/31/03 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200307997
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 20, 2003

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Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005, 303.008, 303.009, 304.003, and 346.101, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of December 1, 2003 - December 7, 2003 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of December 1, 2003 - December 7, 2003 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3]for the period of December 1, 2003 - December 31, 2003 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of December 1, 2003 - December 31, 2003 is 18% for Commercial over $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of January 1, 2004 - March 31, 2004 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard quarterly rate as prescribed by §303.008 and §303.009 for the period of January 1, 2004 - March 31, 2004 is 18% for Commercial over $250,000.

The retail credit card quarterly rate as prescribed by §303.009[1] for the period of January 1, 2004 - March 31, 2004 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The lender credit card quarterly rate as prescribed by §346.101 Texas Fininace Code[1]for the period of January 1, 2004 - March 31, 2004 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by §303.008 and §303.009[4] for the period of January 1, 2004 - March 31, 2004 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The standard annual rate as prescribed by §303.008 and §303.009 for the period of January 1, 2004 - March 31, 2004 is 18% for Commercial over $250,000.

The retail credit card annual rate as prescribed by §303.009[1]for the period of January 1, 2004 - March 31, 2004 is 18% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of December 1, 2003 - December 31, 2003 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of December 1, 2003 - December 31, 2003 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

[3]For variable rate commercial transactions only.

[4]Only for open-end credit as defined in §301.002(14), Texas Finance Code.

TRD-200308130
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 25, 2003

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Court Reporters Certification Board

Certification of Court Reporters

Following the examination of applicants on October 24, 2003, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

MACHINE SHORTHAND: TERI FINEY- LUBBOCK, TX; JENNIFER HILL - SINTON, TX; TERRY RAST- SAN ANTONIO, TX; OLIVIA PORTALES - CORPUS CHRISTI, TX; MELANIE SEIFERT - ROWLETT, TX; CHRISTY WELCH - AUSTIN, TX; ELIZABETH PHILLIPS - GAINESVILLE, TX; TRACI KENT - DESOTO, TX; CARMINA EVANGELISTA - HALTOM CITY, TX; DARLA RILEY - VALLEY VIEW, TX; KELLY PELLETIER - GRAND PRAIRIE, TX; ALMA ALEMAN - FARMERS BRANCH, TX; MONICA LINDSTROM - FT. WORTH, TX; MARISSA GARZA - DALLAS, TX; ADRIANNE DANIELS HARRIS - ARLINGTON, TX; JESSIE FETTER - LEWISVILLE, TX; SHANNON MARTINSON - RED OAK, TX; KAREN HARRIS - PLANO, TX; JARNEKA EPPS - DALLAS, TX; NIKKI GOODING - CARROLLTON, TX; TOI ISABEL - ARLINGTON, TX; BRANDI SCHMITZ - MESQUITE, TX; PRISCILLA PORCHIA - IRVING, TX; AMBER KIRTON - GEORGETOWN, TX; MARIA AMADOR - EDINBURG, TX; LUCIANA MCALISTER - DALLAS, TX; DIANA PEREIRA - DUNCANVILLE, TX; SHANNON BROWN - ALLEN, TX; ELLIE KLEMENS - ROUND ROCK, TX; HEIDI ROYBAL - PALMER, TX; TUESDEE COOPER - DALLAS, TX; JENNIFER HOFFMAN - KINGSLAND, TX; CHRISTINA BROOKS - KINGSLAND, TX; GRELYN SWINK - LONGVIEW, TX; AMANDA TOLTON - ALVIN, TX; CYNTHIA TROUT - HOUSTON, TX; STACEY CRUZ - ARLINGTON, TX; AND LINDA HUTCHINS - AUSTIN, TX.

Following the examination of applicants on July 25, 2003, the Texas Court Reporters Certification Board certified to the Supreme Court of Texas the following individuals who are qualified in the method indicated to practice shorthand reporting pursuant to Chapter 52 of the Texas Government Code, V.T.C.A.:

ORAL STENOGRAPHY: EVA KING RIVERA - ARLINGTON, TX; CLAUDIA HUTCHISON - CLYDE, TX; AND HALINA GONZALES - GRAND PRAIRIE, TX.

TRD-200308132
Sheryl Jones
Administrator of Licensing
Court Reporters Certification Board
Filed: November 25, 2003

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Texas Education Agency

Notice of Voluntary Assessment of Private School Students with the Texas Assessment of Knowledge and Skills (TAKS)

In accordance with the Texas Education Code (TEC), §39.033, the Texas Education Agency (TEA) will make available for administration to private and home schools the Texas Assessment of Knowledge and Skills (TAKS) tests for Grades 3-11, at a per-student cost that does not exceed the cost of administering the same test to a Texas public school student.

Each private and home school choosing to participate in this assessment will be required to sign an agreement with the TEA in which it agrees to maintain security and confidentiality of the test instruments, test all eligible students in all subjects at a particular grade level, follow all procedures specified in the applicable test administration materials, provide to the commissioner of education the information listed

in TEC, §39.051(b), and reimburse the TEA for the cost of the assessment.

Private and home schools interested in participating in the spring 2004 assessment may obtain a copy of the agreement packet by contacting Pearson Educational Measurement, 2201 Donley Drive, Austin, Texas, 78758, (512) 835-4833. All required components of the agreement must be returned no later than February 6, 2004.

Additional information may be obtained from Carolyn Farace, Pearson Educational Measurement, 2201 Donley Drive, Austin, Texas, 78758, (512) 835-4833.

TRD-200308166
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 26, 2003

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Request for Applications Concerning Technology Immersion Pilot (TIP)

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications for Technology Immersion Pilot (TIP) grants, Request for Applications (RFA) #701-04-009, from high need local education agencies (LEAs) or eligible local partnerships. A high-need LEA is defined as: an LEA serving at least 2,500 students from families with incomes below the poverty line as identified by 1999 census data or serving more than 27% of children from families with incomes below the poverty line as identified by 1999 census data, and serving at least one school identified under Title I as in need of improvement or corrective action or an LEA having a substantial need for assistance in acquiring and using technology as reflected on the Texas Campus STaR Chart.

An eligible partnership must include at least one high-need LEA and at least one of the following: (1) an LEA that can demonstrate that teachers are effectively integrating technology and proven teaching practices into instruction, based on a review of relevant research, and that the integration results in improvement in classroom instruction in the core academic subjects and preparation of students to meet student academic achievement standards; (2) an institution of higher education that is in full compliance with the reporting requirements of the Higher Education Act of 1965, §207(f), as amended, and that has not been identified by the state as low performing under that act; (3) a for-profit business or organization that develops, designs, manufactures, or produces technology products or services or has substantial expertise in the application of technology in instruction; or (4) a public or private nonprofit organization with demonstrated expertise in the application of educational technology in instruction. The partnership may also include other LEAs, education service centers (ESCs), libraries, or other educational entities appropriate to provide local programs. If an eligible local partnership applies, a public school district, open- enrollment charter school, or ESC must serve as the fiscal agent of the partnership.

Description. TIP is a federally funded grant program that will leverage the state technology immersion pilot authorized by Senate Bill 396, 78th Texas Legislature, 2003. The immersion pilot seeks to increase student achievement by providing each student with a wireless mobile computing device, software, and online and other learning resources. Through these grants, the TEA will test and evaluate the effectiveness of technology immersion in increasing student achievement in core academic subjects, technology proficiency, attitudes and attendance, as well as the effect on the school environment, personnel, and parent and community partnerships. Some middle schools will be selected to participate in an independent evaluation to determine the effectiveness of the project. LEAs may apply for funding under the TIP in one of the following categories: (1) one or more middle schools serving only Grades 6, 7, and 8; (2) a whole district; (3) a single secondary campus; or (4) a "vertical team" of campuses. A "vertical team" is defined as an elementary-middle-high school feeder pattern.

Dates of Project. Applicants should plan for a starting date of no earlier than July 1, 2004, and an ending date of no later than June 30, 2006, for the project.

Project Amount. It is anticipated that funding will be provided for approximately 30-60 projects, in amounts ranging from $25,000 to $800,000. This project is funded 100% from the Elementary and Secondary Education Act, P.L. 107-110, Title II, Part D.

Selection Criteria. Applications will be funded based on the assessment of each applicant's ability to carry out all requirements contained in the RFA. Applications must address each requirement as specified in the RFA to be considered for funding. The TEA reserves the right to select from the applications those that address all requirements in the RFA and that are most advantageous to the project. The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA #701-04-009 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas, 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e- mailing dcc@tmail.tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Tammy Buckner, Texas Education Agency, at (512) 475-3255 or send email to tip@tea.state.tx.us.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the Texas Education Agency by 5:00 p.m. (Central Time), Thursday, February 19, 2004, to be considered for selection.

TRD-200308165
Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
Filed: November 26, 2003

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Texas Commission on Environmental Quality

Correction of Error

The Texas Commission on Environmental Quality (commission) published notice of intention to review and proposed readoption of 30 TAC Chapter 307, Texas Surface Water Quality Standards, which appeared in the November 21, 2003, issue of the *Texas Register* (28 TexReg 10515). The following errors were contained in the notice.

On page 10515, 2nd column, 5th paragraph, concerning Chapter 307, the first sentence should read: "This review of Chapter 307 is proposed in accordance with Texas Government Code, §2001.039, which requires state agencies to review and consider for readoption each of their rules every four years."

CHAPTER SUMMARY

On page 10515, 2nd column, 6th paragraph, the first sentence should read: "Chapter 307 contains the water quality standards and criteria which the commission uses to develop and authorize wastewater discharge authorizations, certify federal permits and licenses, and protect water body uses."

On page 10515, 2nd column, 6th paragraph, the second sentence should read: "Section 307.1 contains the general standards policy of the commission and the purpose for the chapter which includes maintenance of the quality of water in the state for public health and enjoyment, propagation and protection of terrestrial and aquatic life, operation of existing industries, and economic development of the state."

On page 10516, 1st column, 1st paragraph, 7th line, concerning §307.4, should read: "Section 307.4 lists the general criteria which are applicable to all surface water in the state unless specifically excepted in §307.8, Application of Standards, or §307.9, Determination of Standards Attainment."

On page 10516, 1st column, 1st paragraph, 14th line, concerning §307.8, should read: "Section 307.8 sets forth conditions under which the standards do and do not apply."

PRELIMINARY ASSESSMENT OF WHETHER THE REASONS FOR THE RULES CONTINUE TO EXIST

On page 10516, 1st column, 2nd paragraph, 2nd sentence should read: "The rules are needed to implement Texas Water Code, §26.023, Water Quality Standards."

On page 10516, 1st column, 2nd paragraph, 3rd sentence should read: "The rules also implement the Federal Water Pollution Control Act, §303(a) and (c) (commonly referred to as the Federal Clean Water Act, 1972, 33 United States Code, §1313(a) and (c)), which requires states to review and adopt water quality standards."

TRD-200308170

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Enforcement Orders

An agreed order was entered regarding THOROUGHBRED PROPERTIES, INC. DBA DOUGLASS GENERAL STORE, Docket No. 2002-0307-PST-E on November 6, 2003 assessing $11,500 in administrative penalties with $10,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurencia Fasoyiro, Staff Attorney at (713)422-8914, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GLORIA DEAN, Docket No. 2001-1158-PST-E on November 6, 2003 assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robert Hernandez, Staff Attorney at (210)403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding RAINBOW OILS OF SAN ANGELO, INC., Docket No. 2002-0283-PST-E on November 6, 2003 assessing $43,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at (512)239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding SHEKHANI ENTERPRISES, INC. DBA WESTVIEW TEXACO, Docket No. 2002-0720-PST-E on November 6, 2003 assessing $10,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diana Grawitch, Staff Attorney at (512)239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF ABILENE, Docket No. 2003-0012-MWD-E on November 6, 2003 assessing $6,750 in administrative penalties with $1,350 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512)239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COMAL COUNTY, Docket No. 2003-0344-EAQ-E on November 6, 2003 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210)403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COPC INTERNATIONAL (USA), INCORPORATED DBA COUNTRY CLUB BEVERAGE #2, Docket No. 2003-0172-PST-E on November 6, 2003 assessing $4,225 in administrative penalties with $845 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARRIS COUNTY MUNICIPAL UTILITY DISTRICT NO. 284, Docket No. 2003-0231-MWD-E on November 6, 2003 assessing $6,440 in administrative penalties with $1,288 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512)239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HARRIS COUNTY WCID NO. 1, Docket No. 2003- 0065-MWD-E on November 6, 2003 assessing $66.000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512)239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HILL-LAKE GAS STORAGE, LP, Docket No. 2003- 0286-AIR-E on November 6, 2003 assessing $2,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Easley, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KELLY-MOORE PAINT COMPANY, INC., Docket No. 2003-0498-AIR-E on November 6, 2003 assessing $2,375 in administrative penalties with $475 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903)535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITY OF GALVESTON, Docket No. 2003-0316-WR-E on November 6, 2003 assessing $1,338 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512)239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding POST OAK SPECIAL UTILITY DISTRICT, Docket No. 2003-0582-PWS-E on November 6, 2003 assessing $450 in administrative penalties with $90 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512)239-1896, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAN ANTONIO WATER SYSTEM, Docket No. 2003- 0085-PWS-E on November 6, 2003 assessing $780 in administrative penalties with $156 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210)403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding TAPIA DAIRY, INC., Docket No. 2003-0294-MWD-E on November 6, 2003 assessing $2,240 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Easley, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNITED STATES DEPARTMENT OF JUSTICE/FEDERAL CORRECTIONAL INSTITUTION, Docket No. 2002-0972-PST-E on November 6, 2003 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Todd Huddleson, Enforcement Coordinator at (512)239-1105, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WATERTOWN SOLES, INC., Docket No. 2003-0093- AIR-E on November 6, 2003 assessing $1,300 in administrative penalties with $260 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210)403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding VALERO REFINING COMPANY TEXAS, L.P., Docket No. 2002-1055-AIR-E on November 6, 2003 assessing $8,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard Croston, Enforcement Coordinator at (512)239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding WISEBUY, INCORPORATED DBA UNCLE SAM'S CONVENIENCE STORE AND TRAVEL CENTER, Docket No. 2003-0201-PST-E on November 6, 2003 assessing $6,000 in administrative penalties with $1,200 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, Enforcement Coordinator at (817)588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CHEVRON USA, INC. DBA CHEVRON PRODUCTS COMPANY, Docket No. 2002-1087-AIR-E on November 6, 2003 assessing $2,075 in administrative penalties with $415 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713)422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AQUASOURCE UTILITY, INC., Docket No. 2003- 0276-MWD-E on November 6, 2003 assessing $9,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sherry Smith, Enforcement Coordinator at (512)239-0572, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AQUASOURCE UTILITY, INC. DBA BRITMORE III WASTEWATER TREATMENT FACILITY, Docket No. 2002-1098-MWD-E on November 6, 2003 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713)767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding AMERON INTERNATIONAL CORPORATION, Docket No. 2002-0964-AIR-E on November 6, 2003 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carolyn Easley, Enforcement Coordinator at (915)698-9674, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JULIUS PETRUS, JR., Docket No. 2003-0282-PST-E on November 6, 2003 assessing $5,400 in administrative penalties with $1,080 deferred.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (361)825-3288, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ORANGE COUNTY WCID NO. 1, Docket No. 2002- 0877-MWD-E on November 6, 2003 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Terrance Murphy, Enforcement Coordinator at (512)239-5025, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MILLENNIUM POLYMERS, LTD., Docket No. 2002- 0852-AIR-E on November 6, 2003 assessing $7,500 in administrative penalties with $6,900 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713)422-

8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LUECK DAIRIES TEXAS, LLC, Docket No. 2003- 0230-AGR-E on November 6, 2003 assessing $1,925 in administrative penalties with $385 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817)588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KINDER MORGAN CO2 COMPANY, L.P., Docket No. 2003-0549-AIR-E on November 6, 2003 assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at (210)403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BELL COUNTY WATER CONTROL & IMPROVEMENT DISTRICT NO. 3, Docket No. 2003-0137-MWD-E on November 6, 2003 assessing $8,000 in administrative penalties with $1,600 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512)239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MIKE BARKER DBA MIKE BARKER CONSTRUCTION, Docket No. 2003-0516-OSI-E on November 6, 2003 assessing $250 in administrative penalties with $50 deferred.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at (903)535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200308017
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 20, 2003

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Notice of Application and Preliminary Decision for a Municipal Solid Waste Permit

For the Period of November 7, 2003

APPLICATION The City of Arlington has applied to the Texas Commission on Environmental Quality (TCEQ) for a major permit amendment for the City of Arlington Landfill, a Type I municipal solid waste landfill. The facility is located at the intersection of FM 157 and Mosier Valley Road in the city of Arlington, Tarrant County, Texas. The application was submitted to the TCEQ on January 6, 2003.

The TCEQ executive director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision to issue this draft permit. The permit application, executive director's preliminary decision, and draft permit are available for viewing and copying at East Police Service Center located at 200 New York Avenue in Arlington, Texas.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application by sending a request to the Office of the Chief Clerk at the address below. You may also ask to be on a county-wide mailing list to receive public notices for TCEQ permits in the county.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comment or to ask questions about the application. The TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

You may submit additional written public comment to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court. A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comments may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the permit and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us.

Further information may also be obtained from Mr. William Studer, Deputy City Manager, City of Arlington, 101 West Abram Street, Arlington, Texas 76004 at (817) 459-6122 or from Mr. Michael Oden P.E., HDR Engineering, 17111 Preston Road, Suite 200, Dallas, Texas 75248 or (972) 960-4409.

TRD-200308137
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Notice of Application and Preliminary Decision for Hazardous Waste Compliance Plan

For the Period of November 13, 2003

APPLICATION Eastman Chemical Company, Texas Operations, P. O. Box 7444, Longview, Texas, a hazardous waste management facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment that will 1.) define the point of compliance, establish a Facility Operation Area (FOA), and require the applicant to perform groundwater monitoring in specified point of compliance wells for the duration of the FOA and Talley Waste Management Area; 2.) require operational chemical or petroleum manufacturing plants seeking to obtain a FOA to meet the Qualifying Criteria requirements; 3.) provide a description of the lateral and vertical boundaries, a characterization of the proposed surface and subsurface conditions including groundwater flow patterns, the locations of attenuation monitoring points, a description of the worker health and safety program, identification of ecological impact areas, procedures for tracking and responding to releases, and a monitoring program at the FOA boundary and intermediate points within the FOA; and 4.) require the Applicant to provide financial assurance of $25,500,000 for compliance monitoring, operation of the groundwater recovery systems(s) and sampling and analysis costs for the duration of compliance period(s). The facility is located on a contiguous tract of 5,198 acres of land situation adjacent to Estes Parkway (State Highway No. 149) at the end of Kodak Boulevard, near the city limits of Longview, Gregg and Harrison Counties, Texas. This application was submitted to the TCEQ on September 26, 2000.

The TCEQ executive director has completed the technical review of the application and prepared a draft compliance plan. The draft compliance plan, if approved, would establish the conditions under which the facility must operate. The executive director has made a preliminary decision that this compliance plan, if issued, meets all statutory and regulatory requirements. The compliance plan application, executive director's preliminary decision, and draft compliance plan are available for viewing and copying at the Marshall Public Library, 300 South Alamo, Marshall, Texas 75670.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the application, if requested in writing by an affected person, or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments and requests for a public meeting must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 45 days from the date of newspaper publication of this notice.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for public comments, the executive director will consider the comments and prepare a response to all relevant and material or significant public comments. The response to comments, along with the executive director's decision on the application, will be mailed to everyone who submitted public comments or is on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting a contested case hearing or reconsideration of the executive director's decision. A contested case hearing is a legal proceeding similar to a civil trial in a state district court.

A contested case hearing will only be granted based on disputed issues of fact that are relevant and material to the Commission's decision on the application. Further, the Commission will only grant a hearing on issues that were raised during the public comment period and not withdrawn. Issues that are not raised in public comment may not be considered during a hearing.

EXECUTIVE DIRECTOR ACTION. The executive director may issue final approval of the application unless a timely contested case hearing request or request for reconsideration is filed. If a timely hearing request or request for reconsideration is filed, the executive director will not issue final approval of the compliance plan and will forward the application and requests to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

MAILING LIST. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific application; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing list(s) to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address below. Unless you otherwise specify, you will be included only on the mailing list for this specific application.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us.

Further information may also be obtained from Eastman Chemical Company, Texas Operations at the address stated above or by calling Mr. Mike Childress at (903) 237-5082.

TRD-200308138
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Notice of Comment Period and Hearing on Draft Bulk Fuel Terminal and Site-wide General Operating Permits

The Texas Commission on Environmental Quality (TCEQ) is providing an opportunity for public comment and a notice and comment hearing on revisions to Bulk Fuel Terminal General Operating Permit (GOP) Number 515 and Site-wide GOP Number 516. The draft GOPs contain revisions to the qualification criteria. These revisions will require all permit holders of these GOPs to obtain a site operating permit.

The draft GOPs are subject to a 30-day comment period. During the comment period, any person who may be affected by the emission of air pollutants from emission units that may be authorized to operate under the GOP is entitled to request, in writing, a notice and comment hearing on the draft GOPs. If requested, a hearing will be held on Wednesday, January 7, 2004 at 10:00 a.m. at the TCEQ, Building C, Room 131E, located at 12100 Park 35 Circle, Austin, Texas. If a hearing is requested, the comment period will be extended to the close of the hearing. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present statements when called upon in order of registration. Open discussion within the audience will not occur during the hearing; however, TCEQ staff will be available to discuss the draft GOP and answer questions 30 minutes prior to the hearing and after the hearing.

Copies of the draft GOPs may be obtained from the TCEQ Web site located at *http://www.tnrcc.state.tx.us/permitting/airperm/opd/permtabl.htm* or by contacting the TCEQ Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1250. Written comments and requests for a notice and comment hearing may be mailed to Beryl Thatcher, Texas Commission on Environmental Quality, Office of Permitting, Remediation, and

Registration, Air Permits Division, MC 163, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-5698. All comments and hearing requests should reference the draft GOP and must be received by 5:00 p.m., January 5, 2004. To inquire about the submittal of comments or for further information, contact Ms. Thatcher at (512) 239-5946.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the agency at (512) 239-4900. Requests should be made as far in advance as possible.

TRD-200308129
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Notice of Meeting

Notice of meeting on January 15, 2004, in Jacksonville, Texas concerning the Poly-Cycle--Jacksonville Facility.

The purpose of the meeting is to obtain public input and information concerning proposal of the facility to the state registry of Superfund sites and proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under Texas Solid Waste Disposal Act, Texas Health and Safety Code, Chapter 361, as amended (the Act), to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the September 19, 2003 issue of the *Texas Register* (28 TexReg 8175).

In accordance with the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. With this publication, the commission hereby gives notice of a facility that the executive director determined eligible for listing, and which the executive director proposes to list on the state registry. By this publication, the commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the facility identified. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing land use of the property, as is prescribed in the Texas Risk Reduction Program (30 TAC §350.53).

This publication also specifies the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list this facility was also published on December 5, 2003, in the *Jacksonville Progress*.

The facility proposed for listing is the Poly-Cycle--Jacksonville site, located at 2405 South Jackson Street in Jacksonville, Cherokee County, Texas. The geographic coordinates of the site are 31 degrees 56 minutes 8 seconds north latitude and 95 degrees 14 minutes 54 seconds west longitude. The seven acre site is bordered by State Highway 69 to the east and Loop 456 to the south. Jackson High School is to the west and commercial and residential areas are to the north. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

Poly-Cycle operated a lead battery recycling operation from 1978 to 1983. The facility operated under the name Rocky Point International, then changed the name to Poly-Cycle Industries, with no change in operators. The facility recycled lead from lead acid batteries and casings. Sulfuric acid was drained from the batteries and the lead plates were removed. The sulfuric acid was sent to a hazardous waste disposal firm in Dallas, Texas. The lead plates were sold to a lead smelter. The battery casings were ground and washed to remove the lead and lead sulfate. Four unlined surface impoundments were used to separate the plastic and rubber chips which were sold to plastic recyclers. The lead and lead sulfate sediments on the bottom of the impoundments were sold to a lead smelter.

In 1983, the Texas Department of Health (TDH) found levels of lead exceeding 100,000 milligrams per kilogram (mg/kg) in the soil. Poly-Cycle Industries removed contaminated soil from the Jacksonville site and sent it to the Poly-Cycle's Tecula location. The TDH conducted post removal sampling and accepted closure of the Jacksonville site based on the levels of lead concentrations being generally less than 1,000 mg/kg. Poly-Cycle Industries sold the site to Texas Farm Products, Inc. (TFPI). TFPI removed all the remaining Poly-Cycle structures and built Lone Star Feed Store.

The United States Environmental Protection Agency conducted a site screening investigation (SSI) in March 1991. On-site lead concentrations were generally between 100 - 400 mg/kg, except for two sampling locations. One sample had a lead concentration of 3,780 mg/kg and the other 43,500 mg/kg. On February 24, 2000, the TCEQ conducted a soil sampling event. Soil sample analytical data revealed lead concentration ranging from 3,100 mg/kg to 4,800 mg/kg. Battery chips were also observed around the ditches.

A public meeting will be held on January 15, 2004, at 7:00 p.m. at the Jacksonville Public Library Auditorium, 502 South Jackson Street in Jacksonville, Texas. The purpose of this meeting is to obtain additional information regarding the site relative to its eligibility for listing on the state registry, identify additional potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the facility that is the subject of this notice is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., January 15, 2004, and should be sent in writing to Subhash C. Pal, P.E., Texas Commission on Environmental Quality, Superfund Cleanup Section, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087 or facsimile at (512) 239-2450. The public comment period for proposal of the facility to the state Superfund registry and the proposal of non-residential land use will end at the close of the public meeting of January 15, 2004.

A portion of the record for this site, including documents pertinent to the executive director's determination of eligibility, is available for review at the Jacksonville Public Library, 502 South Jackson Street in Jacksonville, Texas, (903) 586-7664, during regular business hours. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas, (800)

633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the commission's Web site located at *www.tnrcc.state.tx.us/permitting/remed/superfund/index.html*.

For further information about this site or the public meeting, call Bruce McAnally, TCEQ Community Relations, at (800) 633-9363, extension 2141.

TRD-200308126
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 285, On-Site Sewage Facilities

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive comments concerning revisions to 30 TAC Chapter 285, On-Site Sewage Facilities, under the requirements of Texas Health and Safety Code, §382.017 and Texas Government Code, Chapter 2001, Subchapter B.

Proposed new §285.37 and the amendment to §285.39 would implement Senate Bill 1633. This rulemaking will allow those using on-site sewage facilities to discharge back flush from water treatment equipment, like water softeners and reverse osmosis systems, into an on-site sewage facility provided certain conditions are met.

A public hearing on this proposal will be held in Austin on January 8, 2004 at 10:30 a.m. in Building C, Room 131E, at the commission's central office, located at 12100 Park 35 Circle. The hearing will be structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. There will be no open discussion during the hearing; however, an agency staff member will be available to discuss the proposal 30 minutes prior to the hearing and will answer questions before and after the hearing.

Persons with disabilities who have special communication or other accommodation needs who are planning to attend the hearing should contact the Office of Environmental Policy, Analysis, and Assessment at (512) 239-4900. Requests should be made as far in advance as possible.

Comments may be submitted to Patricia Durón, Texas Commission on Environmental Quality, Office of Environmental Policy, Analysis, and Assessment, MC 205, P.O. Box 13087, Austin, Texas 78711-3087, or by fax to (512) 239-4808. All comments should reference Rule Project Number 2003-057-285-WT. Comments must be received by 5:00 p.m., January 12, 2004. For further information, please contact Emily Barrett, Policy and Regulations Division, at (512) 239-3546.

TRD-200308030
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 21, 2003

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Notice of Water Quality Applications

The following notices were issued during the period of November 17, 2003 through November 25, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ALBA has applied for a new permit to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located just west of Farm-to-Market Road 17, approximately one mile south of the City of Alba in Wood County, Texas.

AQUASOURCE UTILITY, INC. has applied for a renewal of TPDES Permit No. 13600-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 22,500 gallons per day. The facility is located at 3946 1/2 Marzia Street, approximately 2,000 feet from its intersection with Almeda Road (Farm-to-Market Road 521) in Fort Bend County, Texas.

BASTROP INDEPENDENT SCHOOL DISTRICT has applied for a new permit, Proposed Permit No. 14200-003, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 10,000 gallons per day via subsurface drip irrigation of 2.78 acres of nonpublic-access land. The facility and disposal site will be located approximately 750 feet northwest of the intersection of County Road 248 and Farm-to-Market Road 1209 in Bastrop County, Texas.

CITY OF BEAUMONT has applied for a renewal of TPDES Permit No. 10501-020, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 46,000,000 gallons per day. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program. The facility is located at 4900 Lafin Road, approximately 3,000 feet south of the intersection of U.S. Highway 69 and State Highway 124 in Jefferson County, Texas.

CITY OF HART has applied for a renewal of Permit No. 10139-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 180,000 gallons per day via oxidation/evaporation with effluent transfer to a playa basin. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.0 mile north of the intersection of State Highway 194 and Farm-to-Market Road 168 and one block west of Farm-to-Market Road 168, north of the City of Hart in Castro County, Texas. The facility and disposal site are located in the drainage basin of North Fork Running Water Draw in Segment No. 1240 of the Brazos River Basin.

THE CITY OF MISSION has applied for a major amendment to TPDES Permit No. 10484-001 to authorize an increase in the discharge of treated domestic wastewater from an annual average flow not to exceed 4,600,000 gallons per day to an annual average flow not to exceed 9,000,000 gallons per day. The facility is located south of the City of Mission, approximately 1,000 feet southwest of the intersection of Farm-to-Market Road 1016 and U.S. Highway 83 in Hidalgo County, Texas.

NEW CANEY MUNICIPAL UTILITY DISTRICT has applied for a major amendment to TPDES Permit No. 12274-001 to authorize an increase in the discharge of treated domestic wastewater to an annual average flow not to exceed 4,000,000 gallons per day and to move the point of discharge approximately 720 feet east-northeast of the permitted site. The facility is located approximately 0.4 mile east and 1.6

miles south of the intersection of Caney Creek and State Highway 59 in Montgomery County, Texas.

CITY OF POINT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14470-001, to authorize the discharge of treated filter backwash water at a daily average flow not to exceed 48,000 gallons per day. The facility is located one mile west of the intersection of Farm-to-Market Road 47 and County Road 1470 on the north side of County Road 1470 in Rains County, Texas.

MARVIN LESTER POUNDERS has applied for a renewal of TPDES Permit No. 12839-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located approximately 400 feet east of U.S. Highway 59 and 1,500 feet south of the U.S. Highway 59 bridge over Wills Creek within the City of Seven Oaks in Polk County, Texas.

REID ROAD MUNICIPAL UTILITY DISTRICT NO.1has applied for a renewal of TPDES Permit No. 11563-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,750,000 gallons per day. The facility is located at 10015 Gusty Wind Road, approximately 3,600 feet south of the intersection of Windfern Road and Perry Road and approximately 1.1 miles east-southeast of the intersection of Farm-to-Market Road 1960 and Jones Road in Harris County, Texas.

SCURRY-ROSSER INDEPENDENT SCHOOL DISTRICT has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14471-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 40,000 gallons per day. The facility is located approximately 1,700 feet south of the intersection of Farm-to-Market Road 148 and State Highway 34 in Kaufman County, Texas.

SHELDON ROAD MUNICIPAL UTILITY DISTRICT has applied for a renewal of TPDES Permit No. 10541-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 210,000 gallons per day. The facility is located approximately 1.25 miles south-southwest of the intersection of U.S. Highway 90 and Sheldon Road in Harris County, Texas.

WILLIAM DONALD SMITH has applied for a renewal of TPDES Permit No. 13770-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 28,125 gallons per day. The facility is located approximately 0.75 miles west of the intersection of State Highway 289 and Veteran Memorial Parkway in Harris County, Texas.

TEXAS DEPARTMENT OF CRIMINAL JUSTICE has applied for a renewal of TCEQ Permit No. 10743-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 800,000 gallons per day. The facility is located west of Alvin at the north end of Jackson Lake; approximately 3.2 miles north and 2 miles west of the intersection of State Highway 288 and Farm-to-Market Road 1462 in Brazoria County, Texas.

CITY OF THRALL has applied for a renewal of Permit No. 13448-001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 66,000 gallons per day via surface irrigation of 26 acres of land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 1.24 miles south of the intersection of U.S. Highway 79 and Bound Street, south of the City of Thrall in Williamson County, Texas.

TINA LEE TILLES DBA TURK BROTHERS BUILDING has applied for a renewal of TPDES Permit No. 11900-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 1,700 gallons per day. The facility is located between Farm-to-Market Road 1960 and Cypress Creek, just south of the intersection of Steubner-Airline Road and Strack Road in Harris County, Texas.

TIM BENNETT ENGINEERING & CONSTRUCTION, INC. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14432-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 280,000 gallons per day. The facility is located 1,000 feet north from the intersection of Farm-to-Market Road 546 and Farm-to-Market Road 3286 in Collin County, Texas.

UA HOLDINGS has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14468-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 360,000 gallons per day. The facility is located approximately 1,500 feet southwest of the intersection of State Highway 105 and Blue Heron Drive in Montgomery County, Texas.

CITY OF VALLEY VIEW has applied for a major amendment to TPDES Permit No. 11164-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 111,000 gallons per day to a daily average flow not to exceed 181,000 gallons per day. The facility is located on the east side of Interstate Highway 35, approximately 1.3 miles south of the intersection of Farm-to-Market Road 922 and Interstate Highway 35 in Cooke County, Texas.

TRD-200308139
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 25, 2003

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Proposed Enforcement Orders

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (the Code), §7.075, which requires that the commission may not approve these AOs unless the public has been provided an opportunity to submit written comments. Section 7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **January 5, 2004**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withhold approval of an AO if a comment discloses facts or considerations that indicate the proposed AO is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code, the Texas Health and Safety Code (THSC), and/or the Texas Clean Air Act (the Act). Additional notice is not required if changes to an AO are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-1864 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on January 5, 2004**. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, §7.075 provides that

comments on the AOs should be submitted to the commission in **writing**.

(1) COMPANY: Clyde Clardy dba Bastrop West Water Supply; DOCKET NUMBER: 2003-1283-PWS-E; IDENTIFIER: Public Water Supply (PWS) Identification Number 0110047; LOCATION: Bastrop, Bastrop County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(2), by failing to provide a minimum chlorine residual of 0.2 milligrams per liter to all points of the distribution system; PENALTY: $260; ENFORCEMENT COORDINATOR: Keith Fleming, (512) 239-0560; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: Medhat Ahmed Sharara dba Bellaire Mobil; DOCKET NUMBER: 2003-0800-PST-E; IDENTIFIER: Petroleum Storage Tank (PST) Facility Identification Number 0026342; LOCATION: Bellaire, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous acceptable financial assurance; PENALTY: $3,280; ENFORCEMENT COORDINATOR: Chris Friesenhahn, (210) 490-3096; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Melissa Rogers dba Bob's Town & Country Market; DOCKET NUMBER: 2003-0915-PST-E; IDENTIFIER: PST Identification Number 49214; LOCATION: Canton, Van Zandt County, Texas; TYPE OF FACILITY: convenience store with underground storage tanks (UST); RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(4) COMPANY: Booker Packing Company; DOCKET NUMBER: 2003-1151-IWD-E; IDENTIFIER: Water Quality (WQ) Permit Number; LOCATION: Booker, Lipscomb County, Texas TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1) and (9), WQ Permit Number 02757, and the Code, §26.121(a), by failing to prevent overapplication and ponding of wastewater, failing to prevent unauthorized discharges of wastewater, and failing to submit noncompliance reports for unauthorized discharges; PENALTY: $9,200; ENFORCEMENT COORDINATOR: Catherine Albrecht, (713) 767-3500; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(5) COMPANY: Craig E. Adams dba Circle M 2; DOCKET NUMBER: 2003-0873-PST-E; IDENTIFIER: PST Identification Number 33791; LOCATION: Houston, Harris County, Texas; TYPE OF FACILITY: underground petroleum storage tanks; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,850; ENFORCEMENT COORDINATOR: Jorge Ibarra, (817) 588-5800; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: The Consolidated Water Supply Corporation; DOCKET NUMBER: 2003-1256-PWS-E; IDENTIFIER: PWS Number 1130027; LOCATION: Latexo, Houston County, Texas; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.47(h), by failing to issue boil water notices; PENALTY: $612; ENFORCEMENT COORDINATOR: Laura Clark, (409) 898-3838; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: City of Galveston; DOCKET NUMBER: 2003-0881-PST-E; IDENTIFIER: PST Facility Identification Number 1251; LOCATION: Galveston, Galveston County, Texas; TYPE OF FACILITY: underground petroleum storage tank; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $950; ENFORCEMENT COORDINATOR: Larry King, (512) 339-2929; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: J & J Powermart LLC dba Texaco Food Mart; DOCKET NUMBER: 2003-1217-PST-E; IDENTIFIER: PST Facility Identification Number 35786, RN102953130; LOCATION: Dripping Springs, Hays County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §§334.7(d)(3), 334.48(c), 334.50(b)(1)(A), and the Code, §26.3475(c), by failing to amend a registration to reflect a change in ownership, failing to properly conduct inventory control, and failing to conduct release detection at a frequency of at least once per month; PENALTY: $3,120; ENFORCEMENT COORDINATOR: Erika Fair, (512) 239-6673; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(9) COMPANY: Metro Suppliers, Inc. dba Metro Mart 4; DOCKET NUMBER: 2003-1178-PST-E; IDENTIFIER: PST Facility Identification Number 51472, RN102462744; LOCATION: Austin, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(5)(A)(i) and (B)(ii), and the Code, §26.3467(a), by failing to make available to a common carrier a valid, current delivery certificate and failing to ensure the timely renewal of a previously issued UST delivery certificate; PENALTY: $1,600; ENFORCEMENT COORDINATOR: Craig Fleming, (512) 239-5806; REGIONAL OFFICE: 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(10) COMPANY: Richard Zaid dba Papa's Food Mart; DOCKET NUMBER: 2003-0989-PST-E; IDENTIFIER: PST Facility Identification Number 1991; LOCATION: South Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance; PENALTY: $2,460; ENFORCEMENT COORDINATOR: Christina McLaughlin, (512) 239-6589; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: City of Rockdale; DOCKET NUMBER: 2003-0075-MWD-E; IDENTIFIER: Texas Pollutant Discharge Elimination System (TPDES) Permit Number 0010658-001; LOCATION: Rockdale, Milam County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010658-001, and the Code, §26.121(a), by failing to comply with permitted effluent limits; PENALTY: $6,560; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(12) COMPANY: Sunoco, Inc. (R&M); DOCKET NUMBER: 2003-0177-AIR-E; IDENTIFIER: Air Account Number HG-0825-G; LOCATION: La Porte, Harris County, Texas; TYPE OF FACILITY: polymer manufacturing; RULE VIOLATED: 40 Code of Federal Regulations (CFR) §§60.482-7(d)(2), 60.482-8(g)(2), 60.482-10(g)(1), 60.486(c)(5), 60.562-2(a), 30 TAC §101.20(1), §115.352(2), and THSC, §382.085(b), by failing to make the first attempt to repair leaking components and failing to document the reason for the delay of repair for leaking fugitive components; 30 TAC §116.110(a)(4) and THSC, §382.0518(a), by failing to obtain a permit or permit-by-rule for dry abrasive cleaning operations at the plant; 30 TAC §116.115(c) and TCEQ Air Permit Number 5572B, by failing to record in the sample result records for emission point numbers (EPNs) 113 and 114 the time that each volatile organic compound (VOC) sample

was taken and the total VOCs emitted to the atmosphere, failing to meet the combined emission limit of 23.2 pounds of VOCs; 30 TAC §111.111(a)(4)(A)(ii), by failing to document daily flare observations; 40 CFR §60.49b(a)(1) - (4), by failing to submit a complete initial startup notification; 40 CFR §60.13(a) and §60.48b(e), by failing to use a certified nitric oxide gas cylinder during the February 27, 2002 cylinder gas audit; 40 CFR §60.564(d), by failing to conduct testing of the emission from EPN 110; PENALTY: $22,915; ENFORCEMENT COORDINATOR: Rebecca Johnson, (713) 767-3500; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(13) COMPANY: V. W. Convenience, Inc. dba Super Stop Food Mart ; DOCKET NUMBER: 2003-1096-PST-E; IDENTIFIER: PST Facility Identification Number 19638; LOCATION: Livingston, Polk County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2)(A)(i)(III) and (ii), (d)(1)(B)(ii) and (iii), (4)(A)(i), and §334.48(c), and the Code, §26.3475(a) and (c)(1), by failing to test a line leak detector, failing to monitor an adequate release detection system, failing to record daily readings, conduct inventory volume measurements for regulated substance inputs, withdrawals, and amount still remaining in the tanks each day, reconcile inventory controls, and failing to monitor the USTs for releases; PENALTY: $3,600; ENFORCEMENT COORDINATOR: Subhash Jain, (512) 239-5867; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Teppco Crude Oil, L.P.; DOCKET NUMBER: 2003-0682-AIR-E; IDENTIFIER: Air Account Number AH-0087-R; LOCATION: Sealy, Austin County, Texas; TYPE OF FACILITY: petroleum storage; RULE VIOLATED: 30 TAC §122.145(2)(C) and THSC, §382.085(b), by failing to submit the federal operating permit semi-annual deviation report; 30 TAC §101.20(1) and 40 CFR §60.7(a)(1) and (3), by failing to submit notification of construction activities and failing to submit notification of startup activities; PENALTY: $6,000; ENFORCEMENT COORDINATOR: Edward Moderow, (361) 825-3100; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: City of Trinity; DOCKET NUMBER: 2003-0077-MWD-E; IDENTIFIER: TPDES Permit Number 0010617-001; LOCATION: Trinity, Trinity County, Texas; TYPE OF FACILITY: wastewater treatment; RULE VIOLATED: 30 TAC §305.125(1), TPDES Permit Number 0010617-001, and the Code, §26.121(a), by failing to comply with effluent limits for ammonia nitrogen and dissolved oxygen; PENALTY: $3,888; ENFORCEMENT COORDINATOR: Sunday Udoetok, (512) 239-0739; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200308123
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 25, 2003

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General Land Office

Notice of Public Hearing on Proposed Amendment to §15.27, Relating to Certification Status of Matagorda County Dune and Beach Access Plan

The Texas General Land Office (GLO) will conduct a public hearing on December 11, 2003, to receive public comment on the proposed amendment to §15.27, relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan. The General Land Office proposes an amendment to §15.27, relating to Certification Status of Matagorda County Dune Protection and Beach Access Plan, in order to update the status of the County's plan. On October 20, 2003, the Matagorda County Commissioners' Court adopted amendments to the County's plan relating to the creation of a pedestrian beach at Matagorda Beach. The new pedestrian beach and additional vehicle access points are being established as part of the development of the Lower Colorado River Authority's (LCRA's) Matagorda Bay Nature Park. Information regarding the park is available at http://www.lcra.org/community/matagorda.html. The Land Office has reviewed the plan amendments and proposes this amendment to §15.27 to certify the Matagorda County dune protection and beach access plan as consistent with state law.

The text of the proposed amendment was published in the November 21, 2003, issue of the *Texas Register*, and appears on the web site of the GLO at http://www.glo.state.tx.us. A copy may also be obtained by contacting Melinda Tracy at (512) 305-9129. Copies of the Matagorda County dune protection and beach access plan are available by contacting the Honorable Greg B. Westmoreland, County Judge, Matagorda County, 1700 Seventh Street, Room 301, Bay City, TX 77414; facsimile 979/245-3697. Copies may also be obtained by contacting the Archives Division, Texas General Land Office; P.O. Box 12873, Austin, TX 78711-2873; facsimile 512/475-4619. The hearing will be held in compliance with §2001.029 of the Texas Government Code to provide all interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing on the proposed rulemaking. The public hearing will be held at 6 p.m. on Thursday, December 11, 2003, at the 130th District Court, 1700 7th Street, Room 317, Bay City, Texas.

Written comments regarding the proposed rule may be submitted in lieu of testimony at the hearing or may be sent by U.S. mail to Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas, 78711-2873; by facsimile transmission to (512) 463-6311; or by email to melinda.tracy@glo.state.tx.us, no later than 5:00 p.m., December 22, 2003.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Shawn Hardeman, Coastal Resources Program, Texas General Land Office, P.O. Box 12873 Austin, Texas 78711-2873, (512) 463-5050, by December 8, 2003, so that appropriate arrangements can be made.

TRD-200308164
Larry L. Laine
Chief Clerk, Deputy Land Commissioner
General Land Office
Filed: November 26, 2003

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Texas Department of Health

Notice of Emergency Cease and Desist Order on Mobile X-Ray of Amarillo

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Mobile X-Ray of Amarillo (registrant-R20514) of Amarillo to cease and desist performing Chest (PA) x-ray procedures with the Dynarad x-ray unit (Model Number HF-110-CM; Serial Number 0281) until the exposure at skin entrance is within regulatory limits. The order will remain in effect until the bureau authorizes the registrant to perform the procedure with the referenced x-ray unit.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of

Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200308172
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 26, 2003

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Notice of Public Hearing on Proposed Rules Concerning the Immunization Requirements for Texas Child-care Facilities, Public or Private Primary and Secondary Schools, and Students Enrolled in Health-related and Veterinary Courses in Institutions of Higher Education.

The Texas Department of Health (department) will hold a public hearing to accept public comments on proposed rules in 25 Texas Administrative Code, Part 1, Chapter 97, Subchapter B, §§97.61-97.72, concerning the immunization requirements for Texas child-care facilities, public or private primary and secondary schools, and students enrolled in health-related and veterinary courses in institutions of higher education. The rules were published in the December 5, 2003, issue of the *Texas Register*.

The hearing will begin at 1:00 p.m. on December 17, 2003, in the Board Room (M-739), Moreton Building, 7th Floor, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Comment time for each individual will be determined by the total number of persons registered to speak.

Further information may be obtained from, or written comments may be submitted to, Janie Garcia, Immunization Division, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756, telephone (512) 458-7284, extension 6430 or (800) 292-9152, or electronic mail at Janie.Garcia@tdh.state.tx.us.

TRD-200308155
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: November 26, 2003

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Houston-Galveston Area Council

Public Meeting Notice

Amendments to the 2022 Metropolitan Transportation Plan (MTP) and the 2004-2006 Transportation Improvement Program (TIP)

Houston-Galveston Area Council

3555 Timmons Lane

Houston, Texas 77027

Tuesday, December 16, 2003

5:30 p.m. - 6:30 p.m.

2nd Floor, Conference Room A

On Tuesday, December 16th, 2003, at 5:30 p.m., the Houston-Galveston Area Council (H-GAC) will host a public meeting on proposed amendments to the 2022 Metropolitan Transportation Plan (MTP) and the 2004-2006 Transportation Improvement Program (TIP). The public is encouraged to attend this important meeting and provide comments to H-GAC. The proposed amendments include:

• Change the scope of work on the I-10 at Gessner project to include an extension and the reconstruction of turn lanes.

• Change the scope of the Dairy Ashford at Turkey Creek to Brittmore at Mayfield project to include the relocation of bike lanes.

• Program Phase I of The Woodlands Town Center Pedestrian Corridor project into the current TIP.

• Program the construction of The Woodlands Park and Ride into the current TIP.

• Increase programming for Grade Separation at Fairmont Parkway.

The public comment period on the amendments begins **Sunday, November 30, 2003.** All comments must be received by H-GAC no later than **5 p.m., Wednesday, December 31, 2003.** To obtain more detailed information, please visit H-GAC's Transportation Web site at www.h-gac.com/transportation or call Lynn Spencer, Transportation Senior Planner, at (713) 993-2436. Copies of the proposed amendments will also be available at the meeting. Written comments may be submitted to Lynn Spencer, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, emailed to lynn.spencer@h-gac.com or faxed to (713) 993-4508.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Lynn Spencer at (713) 993-2436 to make arrangements.

TRD-200308156
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: November 26, 2003

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Texas Department of Human Services

Request for Public Comment

The Texas Department of Human Services (DHS) is seeking comments from the public on its methodology for determining the TANF caseload reduction from federal fiscal year (FFY) 1995 to FFY 2003. This methodology and its results will be submitted to the federal Administration for Children and Families for use in calculating the caseload reduction credit used in determining compliance with TANF work participation rates for FFY 2004. The methodology is posted on the DHS Internet web site at http://www.dhs.state.tx.us/programs/texasworks/TANFcasereduction.html. Written or electronic copies of the methodology can also be obtained by contacting Lea Isgur at (512) 438-4078.

The public comment period begins December 5, 2003, and ends December 19, 2003. Comments must be submitted in writing to Texas Department of Human Services, Lea Isgur, Mail Code W-517, P.O. Box 149030, Austin, Texas 78714-9030. Comments may also be submitted electronically to lea.isgur@dhs.state.tx.us. Issued in Austin, Texas, on November 20, 2003.

TRD-200308001
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: November 20, 2003

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Texas Department of Insurance

Insurer Services

Application for admission to the State of Texas by PHYSICIANS NATIONAL INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Phoenix, Arizona.

Application for admission to the State of Texas by VANTISLIFE INSURANCE COMPANY, a foreign life company. The home office is in East Hartford, Connecticut.

Application to change the name of GOLDEN AMERICAN LIFE INSURANCE COMPANY to ING USA ANNUITY AND LIFE INSURANCE COMPANY, a foreign life company. The home office is in Des Moines, Iowa.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701.

TRD-200308158
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 26, 2003

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Notice of Public Hearing

The Commissioner of Insurance will hold a public hearing under Docket No. 2582, on December 19 2003, at 9:30 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street in Austin, Texas, to consider one appointment to the Building Code Advisory Committee on Specifications and Maintenance (Committee). The appointment of a replacement insurance industry representative is necessary to complete the remainder of the unexpired term of Robert C. Huxel.

The Commissioner is considering the appointment of James Killian of Farmers Insurance Company as an insurance industry representative, who is also a member of the TWIA Board of Directors, to the Committee.

If appointed, Mr. Killian would serve a term beginning on the date appointed by the Commissioner and expiring on September 1, 2005.

Article 21.49 §6C of the Insurance Code provides for the appointment of an advisory committee to advise and make recommendations to the Commissioner on building specifications and maintenance in the plan of operation of the Texas Windstorm Insurance Association (TWIA). Article 21.49 §6C also provides for the membership of the Committee, including public members who reside in a designated catastrophe area, three building industry members who reside in a designated catastrophe area, and three members representing the insurance industry who write insurance in the designated catastrophe areas.

The hearing is held pursuant to the Insurance Code, Article 21.49 §5A, which provides that the Commissioner, after notice and hearing, may issue any orders considered necessary to carry out the purposes of Article 21.49 (Catastrophe Property Insurance Pool Act), including, but not limited to, maximum rates, competitive rates, and policy forms. Any person may appear and testify for or against the proposed appointments.

TRD-200308161
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 26, 2003

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Third Party Administrator Applications

The following third party administrator (TPA) application has been filed with the Texas Department of Insurance and is under consideration.

Application for admission to Texas of CIGNA DENTAL HEALTH, INC., a foreign third party administrator. The home office is PLANTATION, FLORIDA.

Application for admission to Texas of MERCURY CLAIMS & ASSISTANCE OF WISCONSIN, LLC., a foreign third party administrator. The home office is STEVENS POINT, WISCONSIN.

Application for admission to Texas of CLAIM SOURCE, INC. (using the assumed name of ClaimSourceDM, a foreign third party administrator. The home office is CHICAGO, ILLINOIS.

Application for incorporation in Texas of HIGGINBOTHAM INSURANCE AGENCY, INC. (using the assumed name of Higginbotham & Associates), a domestic third party administrator. The home office is FORT WORTH, TEXAS.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200308159
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: November 26, 2003

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Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Department of Licensing and Regulation issues Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Texas Department of Licensing and Regulation (TDLR) determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. These guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by TDLR.

A copy of the guidelines is posted and may be downloaded at http://www.license.state.tx.us/crimconvict.htm. To receive a copy of the guidelines contact TDLR's Enforcement Division at (512) 463-2906 or by e-mail at enforcement@license.state.tx.us.

Criminal Conviction Guidelines

These guidelines are issued by the Texas Department of Licensing and Regulation pursuant to the Texas Occupations Code, §53.025(a). These guidelines describe the process by which the Texas Department of Licensing and Regulation (TDLR) determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. These guidelines present the general factors that are considered in all cases, and also the reasons why particular crimes are considered to relate to each type of license issued by TDLR.

I. Agency's process

Some license applications require the applicant to provide information about criminal convictions. TDLR's Licensing Division also runs a criminal background check through the Department of Public Safety

(DPS) on each original license application and each renewal application filed. If the application or the DPS check reveals a conviction that could be a basis for denying the license, the Licensing staff will refer the matter to TDLR's Enforcement Division for further review. The entire application packet is forwarded, including the completed application form, all attachments, all related correspondence, and the report obtained from DPS.

Upon receipt of an application referral in the Enforcement Division, the matter is immediately assigned to an attorney for review. The attorney treats these referrals as high priority, and reviews the criminal conviction with reference to the applicable statutory provisions and these guidelines.

If the attorney determines that the license should not be denied on the basis of the criminal conviction, then the attorney immediately returns the application and related materials to the Licensing Division, with a memorandum stating his conclusion.

If the attorney determines that the license should be denied due to the criminal conviction, the attorney, with the assistance of an investigator, secures certified copies of the relevant criminal convictions and any other information deemed necessary. A letter of proposed license denial is then mailed to the applicant. The letter clearly identifies the convictions that form the basis of the proposed denial, cites the statutory authority for the proposed denial, and advises the applicant that a hearing may be requested to challenge the proposed denial.

If an applicant requests a hearing on the proposed license denial, the request is immediately forwarded to the prosecuting attorney. The attorney schedules a hearing on the nearest available date, and issues a Notice of Hearing to the applicant. After a hearing is conducted, the Administrative Law Judge issues a Proposal for Decision for consideration by the Commission of Licensing and Regulation. After considering the Proposal for Decision, the Commission may grant or deny the license.

For individuals who are already licensed when the agency discovers a criminal conviction, the process is essentially the same as that described above. A conviction discovered by Licensing staff, an Enforcement investigator, or any other agency employee is referred to the Enforcement Division. If the Enforcement attorney finds, after investigation, that the conviction warrants license suspension or revocation, a letter of proposed license suspension or revocation is issued to the license holder. If the license holder requests a hearing, a hearing is conducted, a Proposal for Decision is issued for consideration by the Commission, and the Commission ultimately decides whether the license should be suspended or revoked.

II. Responsibilities of the applicant

The applicant has the responsibility, to the extent possible, to obtain and provide to the agency the recommendations of the prosecution, law enforcement, and correctional authorities as described in section III below. The applicant has the further obligation to furnish proof in the form required by the agency that the applicant has:

1. maintained a record of steady employment;

2. supported the applicant's dependents;

3. maintained a record of good conduct; and

4. paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

III. General factors

In determining whether a criminal conviction should be grounds to deny a license, the following factors are considered in all cases:

1. the nature and seriousness of the crime;

2. the relationship of the crime to the purposes for requiring a license to engage in the occupation;

3. the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the applicant previously had been involved; and

4. The relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the agency will also consider the following:

1. the extent and nature of the person's past criminal activity;

2. the age of the person when the crime was committed;

3. the amount of time that has elapsed since the person's last criminal activity;

4. the conduct and work activity of the person before and after the criminal activity;

5. evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and

6. other evidence of the person's fitness, including letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person.

IV. Relation of crimes to specific licenses issued by TDLR

These guidelines reflect the most common or well-known categories of crimes, and their relation to specific license types. The vast majority of criminal convictions reviewed by the Department will fit within the categories of crimes described below. However, these guidelines are not intended to be an exclusive listing, i.e. they do not prohibit the Department from considering crimes not listed herein. After due consideration of the circumstances of the criminal act and the general factors listed above, the Department may find that a conviction not described herein renders a person unfit to hold a license.

In addition to the specific crimes listed below, multiple violations of any criminal statute should always be reviewed, for any license type. Multiple violations may reflect a pattern of behavior that renders the applicant unfit for the license.

AIR CONDITIONING AND REFRIGERATION CONTRACTORS

Crimes involving fraud or deceptive trade practices.

Reason:

Licensees have the means and the opportunity to practice deceit, fraud and misrepresentation related to the need for service, parts, and equipment.

Crimes involving prohibited sexual conduct or involving children as victims.

Reasons:

1. Licensees have direct access to private residences and deal directly with the general public.

2. Licensees have direct access to business facilities and deal directly with the owners of the businesses and business personnel.

Crimes against property such as theft or burglary.

Reasons:

1. Air conditioning contractors have access to private residences and businesses, where they may come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

ARCHITECTURAL BARRIERS: REGISTERED ACCESSIBILITY SPECIALISTS

Crimes involving bribery, fraud or deceptive business practices.

Reason:

Under the architectural barriers statute, a registered accessibility specialist (RAS) shall be honest and trustworthy. See 16 Texas Administrative Code §68.76(b).

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

A RAS will have ready access to educational facilities, hotels, recreational facilities, businesses and other public accommodations where he may come into direct contact with unattended persons, including children.

Crimes against property such as theft or burglary.

Reasons:

1. A RAS will have direct access to businesses, where he will come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

AUCTIONEERS

Crimes involving misdemeanor fraud, breach of fiduciary duty, or a deceptive business practice.

Reasons:

1. An auctioneer has direct access to property and monies belonging to others and is considered by law to be acting in a fiduciary capacity.

2. The auctioneer has the opportunity to misrepresent the value or attributes of property being offered for sale at auction.

Crimes against property such as theft or burglary.

Reasons:

1. Auctioneers have access to private residences and businesses, where they will come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would be given the opportunity to engage in further similar conduct.

3. Consignors entrust their property to auctioneers.

4. Auctioneers handle monies belonging to others.

Crimes involving the receipt, sale or other distribution of illegal goods or substances, including stolen property, illegal weapons, drugs, drug paraphernalia, and the like.

Reasons:

1. Auctioneers are in a unique position to receive, sell or otherwise distribute illegal goods or substances.

2. A person with a predisposition and experience in committing such crimes would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct or involving children as victims.

Reasons:

1. Licensees have direct access to private residences and deal directly with the general public.

2. Licensees have direct access to business facilities and deal directly with the owners of the businesses and business personnel.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses, and while auctions are being conducted, in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

BOILER INSPECTORS

Crimes involving misrepresentation, fraud, extortion, bribery, theft or deceptive business.

Reasons:

1. The boiler statute provides that an inspector's commission may be suspended or revoked due to the inspector's untrustworthiness or willful falsification in an application or inspection report. See 16 Texas Administrative Code §65.90(c)(1).

2. Boiler inspectors have direct access to businesses, business owners, employees and in some instances, the general public.

3. Boiler inspectors are in a position to pass boilers during inspection that may have code or safety violations in exchange for an inducement offered by the boiler owner or operator.

CAREER COUNSELING SERVICES

Crimes involving fraud or deceptive business practices.

Reasons:

1. A violation of the Career Counseling Services Act is considered to be a deceptive trade practice. See Occupations Code §2502.301.

2. Career counselors have the means and the opportunity to practice deceit, fraud and misrepresentation related to the services provided to clients.

Conviction of crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, clients would have an inherent trust in the career counselor and be vulnerable to the actions from those with a predisposition to commit such crimes.

Crimes involving promotion of prostitution.

Reasons:

1. Licensees will be in a position to direct groups of young, possibly vulnerable, people.

2. Profession would provide a good cover for persons with a predisposition for promotion of prostitution.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

COMBATIVE SPORTS

Crimes involving misconduct in the participation in or promotion of combative sports events.

Reason:

A person with a demonstrated predisposition and experience in committing crimes related to participation in or promotion of combative sports or other sporting events would have the opportunity to engage in further similar conduct.

Crimes involving fraud or breach of a fiduciary duty would disqualify a promoter, manager, referee, judge, timekeeper or matchmaker.

Reason:

Promoters are entrusted with fighters' careers and often their winnings as well, putting them in a position of trust. A promoter who has demonstrated a predisposition and experience in committing such crimes would be given the opportunity to engage in further similar conduct.

Crimes involving illegal use or possession of controlled substances would be grounds for denial of a license to be a second.

Reasons:

1. Seconds are in care of a fighter's well being and ability to continue in the event. As such, a person with a demonstrated predisposition for illegal controlled substance abuse would be given the opportunity to engage in further such activity, perhaps to further the fighter's cause.

2. Due to the safety and welfare of the fighter in the care of the second, persons with convictions involving illegal use or possession of controlled substances are not fit to hold a license.

COURT INTERPRETERS

Crimes involving deceptive business practices.

Reasons:

1. A violation of the court interpreter statute is considered a deceptive trade practice. See Government Code §57.048.

2. A person with the predisposition and experience in committing false, misleading or deceptive acts in a business context would have the opportunity to engage in further similar conduct.

Crimes involving bribery or perjury.

Reasons:

1. By the nature of the business court interpreters are testifying under oath.

2. A person convicted of bribery or perjury would have the opportunity to engage in further similar conduct.

ELECTRICIANS

Crimes involving fraud or deceptive trade practices.

Reason:

Licensees have the means and the opportunity to practice deceit fraud and misrepresentation related to the need for service, parts, and equipment.

Crimes involving prohibited sexual conduct or involving children as victims.

Reasons:

1. Licensees have direct access to private residences and deal directly with the general public.

2. Licensees have direct access to business facilities and deal directly with the owners of the businesses and business personnel.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees have access to private residences and businesses, where they may come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

ELEVATOR INSPECTORS

Crimes involving deceptive business practices.

Reasons:

1. Obtaining registration by furnishing fraudulent or false information on any application, or engaging in any false, misleading, or deceptive acts are grounds for denial of any certificate of registration. See Health and Safety Code §754.023.

2. A person with the predisposition and experience in committing false, misleading or deceptive acts in a business context would have the opportunity to engage in further similar conduct.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees have access to private residences and businesses, where they may come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, the elevator inspector would, on occasion, be expected to inspect elevators, escalators, and related equipment located in multi-story residential dwellings, placing the residents, both adults and children, in need of protection from those with the predisposition and experience in committing sexual crimes and crimes against young people.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

INDUSTRIALIZED HOUSING AND BUILDINGS

Crimes involving deceptive business practices.

Reasons:

1. Furnishing false information on any application, or engaging in any false, misleading, or deceptive acts are grounds for denial of any certificate of registration. See Occupations Code §1202.302.

2. A person with the predisposition and experience in committing false, misleading or deceptive acts in a business context would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, an industrialized builder or third party inspector would, on occasion, be expected to inspect residential housing, placing the residents, both adults and children, in need of protection from those with the predisposition and experience in committing sexual crimes and crimes against young people.

PERSONNEL EMPLOYMENT SERVICES

Crimes involving fraud or deceptive business practices.

Reason:

A person with a predisposition and experience in committing fraud and deceptive business practices would be given the opportunity to engage in further deceptive trade practices.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business persons using personnel employment services are looking for employment and in a vulnerable position and in need of protection from those with a predisposition and experience in committing sexual crimes and crimes against young people.

Crimes involving promotion of prostitution.

Reasons:

1. Licensees will be in a position to direct groups of young, possibly vulnerable, people.

2. The profession would provide a good cover for persons with a predisposition for promotion of prostitution.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

PREPAID LEGAL SERVICES

Crimes involving fraud or deceptive trade practices.

Reason:

Licensees have the means and the opportunity to practice deceit fraud and misrepresentation related to the need for services.

Crimes involving prohibited sexual conduct or involving children as victims.

Reasons:

1. Licensees have direct access to private residences and deal directly with the general public.

2. Licensees have direct access to business facilities and deal directly with the owners of the businesses and business personnel.

Crimes against property such as theft or burglary.

Reasons:

1. Licensees have access to private residences and businesses, where they may come into direct contact with unattended property.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

PROPERTY TAX CONSULTANTS

Crimes involving fraud in a business setting.

Reasons:

1. Dishonesty or fraud while performing property tax consulting services is grounds for denial of a property tax consultant license. See Occupations Code §1152.251.

2. A person with a predisposition and experience in committing fraud in a business context would be given the opportunity to engage in further similar activity.

Crimes involving stealing from an employer, tax fraud, bribery or perjury.

Reason:

The very nature of the business, representing persons before the tax assessor collector, would open avenues to steal from a client (i.e. take refunds awarded clients), commit tax fraud or bribery of an official, or outright perjury in the proceeding.

Crimes involving crimes against property such as theft or burglary.

Reasons:

1. Property tax consultants have access to private residences and businesses.

2. A person with the predisposition and experience in committing crimes against property would be given the opportunity to engage in further similar conduct.

SERVICE CONTRACT PROVIDERS

Crimes involving deceptive business practices.

Reasons:

1. Making, permitting or causing false or misleading statements is a prohibited act. See Occupations Code §1304.161.

2. A person with a predisposition and experience in making false or misleading statements would have the opportunity to engage in further similar conduct.

Crimes involving insurance fraud.

Reason:

Service contracts are insurance policies of sorts. As such, someone who has been convicted of insurance fraud would be given the opportunity to engage in further similar conduct.

STAFF LEASING SERVICES

Crimes involving bribery or fraud, in a business or governmental setting.

Reason:

A person with a predisposition and experience in committing bribery or fraud in a business or governmental context would have the opportunity to engage in further similar activity.

Crimes involving insurance or tax fraud.

Reasons:

1. Staff leasing companies handle insurance, payroll taxes, withholding taxes, etc. for their employees and client companies.

2. A person with a predisposition to commit insurance or tax fraud would have the opportunity to engage in further similar activity.

Crimes against property such as theft or burglary.

Reasons:

1. Staff leasing companies handle large sums of money for their employees and client companies.

2. A person with the predisposition and experience in committing theft crimes would have the opportunity to engage in further similar conduct.

TALENT AGENCIES

Crimes involving fraud or deceptive business practices.

Reasons:

1. A violation of the talent agency statute is considered a deceptive trade practice. See Occupations Code §2105.251.

2. A person with a predisposition and experience in committing fraud and deceptive business practices would be given the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, artists would be largely children and people who are trusting the talent agency to manage their careers. Such individuals are in a vulnerable position and in need of protection from those with a predisposition and experience in committing sexual crimes and crimes against young people.

Crimes against property such as theft or burglary.

Reasons:

1. Talent agencies handle money for their clients, and make deals for the payment of money to their clients.

2. A person with the predisposition and experience in committing theft crimes would have the opportunity to engage in further similar conduct.

Crimes involving promotion of prostitution.

Reasons:

1. Licensees will be in a position to direct groups of young, possibly vulnerable, people.

2. The profession would provide a good cover for persons with a predisposition for promotion of prostitution.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

TEMPORARY COMMON WORKER EMPLOYER

Crimes involving labor or employment, including harmful employment and theft of service.

Reasons:

1. The statute requires that these individuals shall provide for the health, safety, and welfare of workers throughout the state. A person with a demonstrated predisposition and experience in committing crimes involving harmful employment would have the opportunity to engage in further similar activity.

2. A person with a predisposition and experience in any criminal labor or employment activity would have the opportunity to engage in further similar conduct.

Crimes involving deceptive business practices.

Reason:

A person with a predisposition and experience in deceptive business practices would be allowed to engage in further similar activity.

Crimes involving violations against public administration such as bribery, perjury or abuse of office.

Reason:

A person with a predisposition and history of bribery, perjury or abuse of office would be allowed to potentially abuse the authority provided by the license and potentially commit the same types of crimes.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

Temporary common workers will include people in dire circumstances, many of them young people. Such individuals are in a vulnerable position and in need of protection from those with a predisposition and experience in committing sexual crimes and crimes against young people.

Crimes involving promotion of prostitution.

Reasons:

1. Licensees will be in a position to direct groups of young, possibly vulnerable, people.

2. The profession would provide a good cover for persons with a predisposition for promotion of prostitution.

VEHICLE PROTECTION PRODUCT WARRANTORS

Crimes involving deceptive business practices.

Reasons:

1. Making, permitting, or causing to be made any false or misleading statement is a prohibited act. See Occupations Code §14.

2. A person with a conviction or predisposition for deceptive or misleading business practices would have the opportunity to engage in further similar conduct.

WATER WELL DRILLERS

Crimes involving deceptive business practices.

Reasons:

1. The water well drillers statute authorizes disciplinary action for an intentional misstatement or misrepresentation of fact, failure to advise a person for whom a well is being drilled that injurious water has been encountered. See Occupations Code §1901.301.

2. A person having the predisposition and experience in committing deceptive business practices would have the opportunity to engage in further similar conduct.

Crimes involving environmental law violations.

Reason:

A person having the predisposition and experience in committing environmental law violations would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, well drillers are on residential properties, placing the residents, both adults and children, in need of protection from those with the predisposition and experience in committing sexual crimes and crimes against young people.

Crimes involving illegal use or possession of controlled substances.

Reason:

Due to the safety concerns pertaining to the operation of the equipment, a person with convictions involving illegal use or possession of controlled substances has not demonstrated fitness for the duties performed by a well driller.

Crimes against property such as theft or burglary.

Reasons:

1. Well drillers have access to private residences and businesses.

2. A person with the predisposition and experience in committing crimes against property would have the opportunity to engage in further similar conduct.

WATER WELL PUMP INSTALLERS

Crimes involving deceptive business practices.

Reasons:

1. A person with the predisposition and experience in misrepresentations of fact in the business setting would have the opportunity to engage in further similar conduct.

2. A person practicing deception through failing to advise a person having a water well pump installed of groundwater contamination or fails to ensure safeguards in accordance with established construction standards puts the well owner and other groundwater formations at risk.

Crimes involving environmental law violations.

Reason:

A person having the predisposition and experience in committing environmental law violations would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct or involving children as victims.

Reason:

By the nature of the business, water well pump installers are on residential properties, placing the residents, both adults and children, in need of protection from those with the predisposition and experience in committing sexual crimes and crimes against young people.

Crimes involving illegal use or possession of controlled substances.

Reason:

Due to the safety concerns pertaining to the operation of the equipment, a person with convictions involving illegal use or possession of controlled substances has not demonstrated fitness for the duties performed by a water well pump installer.

Crimes involving crimes against property such as theft or burglary.

Reasons:

1. Water well pump installers have access to private residences and businesses.

2. A person with the predisposition and experience in committing crimes against property would be given the opportunity to engage in further similar conduct.

Crimes against the person such as homicide, kidnapping and assault.

Reasons:

1. Licensees have direct contact with persons at residences and businesses in situations that have potential for confrontational behavior.

2. A person with a predisposition for a violent response would pose a risk to the public.

WEATHER MODIFICATION

Crimes involving deceptive business practices and fraudulent financial management practices.

Reasons:

1. Committing fraud, deceit or misrepresenting facts in obtaining a permit or license and/or being indebted to the state for a fee, payment of a penalty or a tax imposed are grounds for revocation or suspension of a permit and/or license. See 77th Legislative Session, Senate Bill 1175, Article 1, §1.63.

2. A person with the predisposition and experience in misrepresentation of fact in the business, financial, or corporate management setting would be have the opportunity to engage in further similar conduct.

Crimes involving illegal use or possession of controlled substances.

Reason:

Due to the extreme safety concerns pertaining to the aviation and radar control aspects of the program, persons with convictions involving illegal use or possession of controlled substances have not demonstrated fitness for a permit or license.

Crimes involving environmental law violations.

Reason:

A person having the predisposition and experience in committing environmental law violations would have the opportunity to engage in further similar conduct.

TRD-200308006
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: November 20, 2003

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 402 "Magnificent Sevens"

1.0 Name and Style of Game.

A. The name of Instant Game No. 402 is "MAGNIFICENT SEVENS". The play style for Game 1 is "match up with doubler"; Game 2 is "key symbol match with auto win"; Game 3 is "key number match with tripler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 402 shall be $7.00 per ticket.

1.2 Definitions in Instant Game No. 402.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: $1.00, $2.00, $5.00, $7.00, $10.00, $11.00, $20.00, $27.00, $50.00, $77.00, $100, $1,000, $7,000, $177,000, GOLD BAR SYMBOL, COIN SYMBOL, MONEY BAG SYMBOL, STACK OF BILLS SYMBOL, DOLLAR SIGN SYMBOL, STAR SYMBOL, TAILS SYMBOL, HEADS SYMBOL, SEVEN SYMBOL, 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, and 39.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 402 – 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$7.00	SEVEN$
$10.00	TEN$
$11.00	ELEVEN
$20.00	TWENTY
$27.00	TWY SVN
$50.00	FIFTY
$77.00	SVY SVN
$100	ONE HUND
$1,000	ONE THOU
$7,000	SVN THOU
$177,000	177 THOU
GOLD BAR SYMBOL	GOLD
COIN SYMBOL	COIN
MONEY BAG SYMBOL	$BAG
STACK OF BILLS SYMBOL	BILLS
DOLLAR SIGN SYMBOL	MONEY
STAR SYMBOL	STAR
TAILS SYMBOL	TAILS
HEADS SYMBOL	HEADS
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	AUTO
7	DOUBLE
7	TRPL
8	EGT
9	NIN
10	TEN
11	ELV

12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
37	TRSV
38	TRET
39	TRNI

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 402 - 1.2E

CODE	PRIZE
SVN	$7.00
ELV	$11.00
SVT	$17.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $7.00, $11.00, or $17.00.

H. Mid-Tier Prize - A prize of $27.00, $47.00, $77.00, $177, or $577.

I. High-Tier Prize - A prize of $7,000 or $177,777.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (402), a seven (7) digit pack number, and

a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 402-0000001-000.

L. Pack - A pack of "MAGNIFICENT SEVENS" Instant Game tickets contains 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "MAGNIFICENT SEVENS" Instant Game No. 402 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "MAGNIFICENT SEVENS" Instant Game is determined once the latex on the ticket is scratched off to expose 48 (forty-eight) play symbols. In Game 1, if the player reveals the designated three (3) identical play symbols, the player will win the prize indicated. If the player reveals two (2) identical play symbols and a "7" symbol as part of the winning combination of the game, the player will double the prize indicated. In Game 2, if the player matches the play symbol, YOUR SYMBOLS, to the designated key play symbol, LUCKY SYMBOL, the player will win the prize indicated. If the player reveals the designated play symbol, "7", the player automatically wins the corresponding prize. In Game 3, if the player matches the play symbol, YOUR NUMBERS, to the designated key play symbol, CASH NUMBER, the player will win the prize indicated. If the player reveals the designated play symbol, "7", under any of YOUR NUMBERS the player will triple the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 48 (forty-eight) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 48 (forty-eight) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 48 (forty-eight) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 48 (forty-eight) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prizes can be won in each game, all prize symbols may be used in non-winning locations, unless restricted elsewhere.

C. Game 1: No more than two (2) pairs of identical play symbols in this Game.

D. Game 1: No four or more identical play symbols in this Game.

E. Game 1: The "7" doubler symbol may appear only once but may be used on both winning and non-winning Games.

F. Game 1: When the "7" doubler symbol appears in a winning Game, there will be no more than 2 identical play symbols in this Game.

G. Game 1: The $7 play symbol will only appear in this game when it is part of a win.

H. Game 2: No duplicate non-winning Your Symbols on a ticket.

I. Game 2: No duplicate non-winning prize symbols on a ticket in this game.

J. Game 2: The autowin symbol will appear according to the prize structure and will only appear once in this Game.

K. Game 3: No duplicate Cash Number play symbols on a ticket.

L. Game 3: No duplicate non-winning prize symbols on a ticket in this game.

M. Game 3: The "7" tripler symbol will only appear on winning tickets as dictated by the prize structure.

N. Game 3: No duplicate non-winning Your Number play symbols on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "MAGNIFICENT SEVENS" Instant Game prize of $7.00, $11.00, $17.00, $27.00, $47.00, $77.00, $177, or $577 a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $27.00, $47.00, $77.00, $177, or $577 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "MAGNIFICENT SEVENS" Instant Game prize of $7,000 or $177,777 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "MAGNIFICENT SEVENS" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "MAGNIFICENT SEVENS" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 6,000,000 tickets in the Instant Game No. 402. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 402 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$7	1,200,000	5.00
$11	240,000	25.00
$17	240,000	25.00
$27	80,000	75.00
$47	80,000	75.00
$77	43,500	137.93
$177	10,000	600.00
$577	500	12,000.00
$7,000	16	375,000.00
$177,777	4	1,500,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 3.17. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 402 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 402, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308133
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 25, 2003

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Instant Game Number 424 "7-Come-11"

1.0 Name and Style of Game.

A. The name of Instant Game No. 424 is "7-COME-11". The play style is "add up".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 424 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 424.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $100, $200, and $5,000.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 424 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$8.00	EIGHT$
$10.00	TEN$
$20.00	TWENTY
$40.00	FORTY
$100	ONE HUND
$200	TWO HUND
$5,000	FIV THOU

E. Retailer Validation Code - Three (3) small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 424 - 1.2E

CODE	PRIZE
ONE	$1.00
TWO	$2.00
FOR	$4.00
EGT	$8.00
TEN	$10.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $8.00, $10.00, or $20.00.

H. Mid-Tier Prize - A prize of $40.00, $100, or $200.

I. High-Tier Prize - A prize of $5,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (424), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 249 within each pack. The format will be: 424-0000001-000.

L. Pack - A pack of "7-COME-11" Instant Game tickets contain 250 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 000 to 004 will be on the top page; tickets 005 to 009 on the next page; etc.; and tickets 245 to 249 will be on the last page. Tickets 000 and 249 will be manually folded over so two ticket fronts appear on each side of the book.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government

Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "7-COME-11" Instant Game No. 424 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "7-COME-11" Instant Game is determined once the latex on the ticket is scratched off to expose 12 (twelve) play symbols. The player will add up all of the play symbol, dice, in each game. If the total of YOUR DICE is added up and equals the required amount of seven (7) for that game, the player will win the prize indicated. If the total of YOUR DICE is added up and equals the required amount of 11 (eleven) for that game, the player will win double the prize indicated. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 12 (twelve) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 12 (twelve) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 12 (twelve) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 12 (twelve) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No duplicate non-winning prize symbols on a ticket.

C. No duplicate non-winning rolls in any order on a ticket.

2.3 Procedure for Claiming Prizes.

A. To claim a "7-COME-11" Instant Game prize of $1.00, $2.00, $4.00, $8.00, $10.00, $20.00, $40.00, $100, or $200, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $40.00, $100, or $200 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "7-COME-11" Instant Game prize of $5,000 the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the

event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "7-COME-11" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "7-COME-11" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 15,120,000 tickets in the Instant Game No. 424. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 424 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,935,360	7.81
$2	876,960	17.24
$4	272,160	55.56
$8	60,480	250.00
$10	60,480	250.00
$20	60,480	250.00
$40	24,570	615.38
$100	3,780	4,000.00
$200	2,268	6,666.67
$5,000	36	420,000.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 4.59. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 424 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 424, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308135
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 25, 2003

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Instant Game Number 434 "Doubler Bingo"

1.0 Name and Style of Game.

A. The name of Instant Game No. 434 is "DOUBLER BINGO". The play style is "bingo with doubler".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 434 shall be $2.00 per ticket.

1.2 Definitions in Instant Game No. 434.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: B01, B02, B03, B04, B05, B06, B07, B08, B09, B10, B11, B12, B13, B14, B15, I16, I17, I18, I19, I20, I21, I22, I23, I24, I25, I26, I27, I28, I29, I30, N31, N32, N33, N34, N35, N36, N37, N38, N39, N40, N41, N42, N43, N44, N45, G46, G47, G48, G49, G50, G51, G52, G53, G54, G55, G56, G57, G58, G59, G60, O61, O62, O63, O64, O65, O66, O67, O68, O69, O70, O71, O72, O73, O74, O75, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, FREE, and DBL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 434 - 1.2D

PLAY SYMBOL	CAPTION
B01	
B02	
B03	
B04	
B05	
B06	
B07	
B08	
B09	
B10	
B11	
B12	
B13	
B14	
B15	
I16	
I17	
I18	
I19	
I20	
I21	
I22	
I23	
I24	
I25	
I26	
I27	
I28	
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N44	
N45	
G46	

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62	
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64	
65	
66	
67	
68	
69	

70	
71	
72	
73	
74	
75	
FREE	
DBL	

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 434 - 1.2E

CODE	PRIZE
TWO	$2.00
THR	$3.00
FIV	$5.00
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique thirteen (13) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $2.00, $3.00, $5.00, $10.00, $15.00, or $20.00.

H. Mid-Tier Prize - A prize of $30.00, $50.00, $100, or $500.

I. High-Tier Prize - A prize of $1,000 or $25,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A 13 (thirteen) digit number consisting of the three (3) digit game number (434), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 124 within each pack. The format will be: 434-0000001-000.

L. Pack - A pack of "DOUBLER BINGO" Instant Game tickets contain 125 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). Ticket 000 will be shown on the front of the pack; the back of ticket 124 will be revealed on the back of the pack. Every other book will reverse i.e., the back of ticket 000 will be shown on the front of the pack and the front of ticket 124 will be shown on the back of the pack.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "DOUBLER BINGO" Instant Game No. 434 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "DOUBLER BINGO" Instant Game is determined once the latex on the ticket is scratched off to expose 130 (one hundred thirty) play symbols. The player must scratch off the CALLER'S CARD area to reveal 24 (twenty-four) Bingo Numbers and six (6) Bonus Numbers. The player must mark all the BINGO NUMBERS on Cards 1 through 4 that match the Caller's Card. Each card has a corresponding prize box. If the player matches all bingo numbers plus the Free Space in a complete horizontal, vertical, or diagonal line pattern in any one card the player may win the corresponding prize up to $10. If the player matches all bingo numbers plus the Free Space in all four (4) corners pattern in any one card the player may win the corresponding prize up to $100. If the player matches all bingo numbers plus the Free Space to make a complete "X" pattern in any one card the player may win the corresponding prize up to $25,000. DOUBLER SYMBOL: The DBL Symbol in the four Bingo Cards can be used as

a Free Space to complete a winning pattern. If the DBL symbol appears in any winning Bingo card and pattern, the prize amount for that card or pattern is doubled. For example, a diagonal line winner pattern is created if you match 3 of the 4 required numbers and reveal a DBL symbol in that line for that card and pattern. The "DBL" symbol in the bingo cards is a free spot. If it appears in any winning bingo card and pattern, the prize for that card and pattern is doubled. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 130 (one hundred thirty) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 130 (one hundred thirty) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 130 (one hundred thirty) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 130 (one hundred thirty) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. A ticket will win as indicated by the prize structure.

B. A ticket can win up to four times and only once per Card.

C. Adjacent tickets in a pack will not have identical patterns.

D. There will never be more than one win on a single Bingo Card.

E. No duplicate numbers will appear on the Caller's Card and Bonus Numbers.

F. No duplicate numbers will appear on each individual Player's Card.

G. Each Caller's Card (including the Bonus Numbers) will have a minimum of four (4) and a maximum of eight (8) numbers from each range per letter.

H. There will be a DBL symbol on each Game Card found in random locations except in any of the four (4) corners or the other four (4) locations that are involved with the "X" wins. On any one ticket the position of the DBL symbol should be different for each of the four (4) Game Cards.

I. The DBL symbol will act as a FREE space. If a winning pattern is found which contains a DBL symbol, the prize won will be Doubled.

J. The number range used for each letter will be as follows: B: 01-15; I: 16-30; N: 31-45; G: 46-60; O: 61-75.

K. Each Player's Card on the same ticket must be unique.

L. The 24 (twenty-four) Caller's Card numbers and six (6) Bonus numbers will match 39 to 59 numbers per ticket (not including the FREE or DBL spaces).

2.3 Procedure for Claiming Prizes.

A. To claim a "DOUBLER BINGO" Instant Game prize of $2.00, $3.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas

Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim a "DOUBLER BINGO" Instant Game prize of $1,000 or $25,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "DOUBLER BINGO" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "DOUBLER BINGO" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

2.7 Disclaimer. The number of actual prizes in a game may vary based on sales, distribution, testing, and number of prizes claimed. An Instant Game may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefore, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefore, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 19,920,000 tickets in the Instant Game No. 434. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 434 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$2	2,390,400	8.33
$3	1,314,720	15.15
$5	597,600	33.33
$10	318,720	62.50
$15	79,680	250.00
$20	159,360	125.00
$30	56,440	352.94
$50	33,200	600.00
$100	23,240	857.14
$500	1,245	16,000.00
$1,000	55	362,181.82
$25,000	10	1,992,000.00

*The number of actual winners may vary based on sales, distribution, and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.00. The individual odds of winning for a particular prize level may vary based on sales, distribution, and number of prized claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 434 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 434, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200308134
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: November 25, 2003

♦ ♦ ♦

Texas Department of Protective and Regulatory Services

Request for Proposal--Training and Technical Assistance Program

The Texas Department of Protective and Regulatory Services (PRS), Division of Prevention and Early Intervention, is soliciting proposals for the provision of Training and Technical Assistance to the Community Youth Development (CYD) and Services to At-Risk Youth (STAR) programs. PRS anticipates funding one contract as a result of this solicitation. The request for proposal (RFP) will be released on or about December 1, 2003, and will be posted on the State Internet Site at http://www.marketplace.state.tx.us/ on the date of its release.

Brief Description of Services: The purpose of this RFP is to solicit providers for direct delivery of training and technical assistance services to the CYD and STAR providers.

Eligible Offerors: Eligible offerors include private nonprofit and for-profit corporations, cities, counties, state agencies/entities, partnerships, and individuals. Historically Underutilized Businesses (HUBs), Minority Businesses and Women's Enterprises, and Small Businesses are encouraged to apply.

Deadline for Proposals, Term of Contract, and Amount of Award: Proposals will be due January 20, 2004, at 3:00 p.m. A maximum amount not to exceed $189,918 is available for the period March 1, 2004 - August 31, 2004, and an amount not to exceed $379,836 is available for the period September 1, 2004 - August 31, 2005, for a total contract amount of $569,754. The effective date of the contract awarded under this RFP will be March 1, 2004, through August 31, 2005.

Limitations: The funding allocated for the contract resulting from this RFP is dependent on Legislative appropriation. Funding is not guaranteed at the maximum level, or at any level. PRS reserves the right to reject any and all offers received in response to this RFP and to cancel this RFP if it is deemed in the best interest of PRS. PRS also reserves the right to re-procure this service.

If no acceptable responses are received, or no contract is entered into as a result of this procurement, PRS reserves the right to procure by non-competitive means in accordance with the law but without further notice to potential vendors.

Contact Person: Potential offerors may obtain a copy of the RFP on or about December 1, 2003. It is preferred that requests for the RFP

be submitted in writing (by mail or fax) to: Vicki Logan; Mail Code Y-956; Texas Department of Protective and Regulatory Services; P.O. Box 149030 Austin, Texas 78714-9030; Fax: (512) 821-4767.

TRD-200308127
C. Ed Davis
Deputy Director, Legal Services
Texas Department of Protective and Regulatory Services
Filed: November 25, 2003

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Public Utility Commission of Texas

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On November 20, 2003, BarTel Communications, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60522. Applicant intends to relinquish its certificate.

The Application: Application of BarTel Communications, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28932.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 10, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28932.

TRD-200308128
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 17, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Easton Telecom Services, L.L.C. for a Service Provider Certificate of Operating Authority, Docket Number 28918 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service and long distance service.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 10, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28918.

TRD-200308009
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 18, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Eschelon Operating Company for a Service Provider Certificate of Operating Authority, Docket Number 28920 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ADSL, ISDN, RADSL, Fraction T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by SBC Texas and Verizon SW.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 10, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28920.

TRD-200308024
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 2003

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 19, 2003, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Easy Switch Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 28925 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, ISDN, T1-Private Line, Frame Relay, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 10, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28925.

TRD-200308025

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 20, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Ennis service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Ennis service area. Docket Number 28908.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Ennis service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28908.

TRD-200307977
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Forney service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Forney service area. Docket Number 28909.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Forney service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28909.

TRD-200307978
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Glendale service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Glendale service area. Docket Number 28910.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Glendale service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28910.

TRD-200307979
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Mansfield service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Mansfield service area. Docket Number 28911.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Mansfield service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28911.

TRD-200307980
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Red Oak service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Red Oak service area. Docket Number 28912.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Red Oak service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28912.

TRD-200307981
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Taylor service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Taylor service area. Docket Number 28913.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Taylor service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28913.

TRD-200307982
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Application for Waiver of Denial of Entire NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on November 17, 2003, for waiver of an entire NXX in order for ionex telecommunications to offer a more competitive range of services within the Waxahachie service area.

Docket Title and Number: Petition of ionex telecommunications for Waiver of Entire NXX to Offer More Competitive Services in the Waxahachie service area. Docket Number 28914.

The Application: ionex telecommunications is requesting a state waiver be granted of an entire NXX in order to offer a more competitive range of services to the local businesses within the Waxahachie service area.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than December 19, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28914.

TRD-200307983
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 19, 2003

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Notice of Filing Made for Approval of a Tariff Rate Change Pursuant to P.U.C. Substantive Rule 26.171

Notice is given to the public of an application filed by Taylor Telephone Cooperative, Incorporated (Taylor Telephone) with the Public Utility Commission of Texas (commission) on November 3, 2003, to make a tariff rate change.

Docket Title and Number: Application of Taylor Telephone Cooperative, Incorporated for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule 26.171. Tariff Control Number 28839.

The Application: Taylor Telephone has filed a statement of intent with the commission to increase their Returned Check Charge from $4.25 to $25.00. The proposed effective date for implementing the increased service charge is February 4, 2004. The estimated net increase to Taylor Telephone's total regulated intrastate gross annual revenues due to the proposed increase is $3,486.00. The proposed increase in the Returned Check Charge will not result in a rate increase to any customer unless the customer issues a check for payment that is not honored by that customer's bank or depository and is returned to Taylor Telephone.

For a copy of the proposed tariffs or for further information regarding this application, customers should contact Taylor Telephone at North Side Interstate 20, Merkel, Texas 79536 or call (915) 846-4111 during regular business hours.

If the commission receives a complaint(s) relating to these proposals signed by 5% or more of Taylor Telephone's members to which these proposals apply, by January 25, 2004, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s). As of December 31, 2002, the 5% limitation equals 383 customers. Persons wishing to comment or intervene should contact the Public Utility Commission of Texas, Customer Protection Division, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission at (512) 936-7120 or in Texas (toll-free) at 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission at (toll-free) 1-800-735-2988.

TRD-200308160

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 26, 2003

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Petition for Suspension of Federal Communications Commission Requirement to Implement Local Number Portability

Notice is given to the public of the filing of an application with the Public Utility Commission of Texas (commission) on November 20, 2003, for suspension of the Federal Communications Commission (FCC) requirement to implement local number portability.

Docket Style and Number: Petition CenturyTel of San Marcos, Inc. and CenturyTel of Lake Dallas, Inc. for Suspension of Federal Communications Commission Requirement to Implement Number Portability. Docket Number 28935.

The Petitions: CenturyTel of San Marcos, Inc. and CenturyTel of Lake Dallas, Inc. (Petitioners) filed the above styled and numbered application seeking to suspend a FCC requirement to implement local number portability (LNP) by November 24, 2003. Applicants' contend that the FCC's requirement to provide LNP by November 24, 2003 is technically infeasible for Petitioners at this time. Applicants believe an interim order is necessary to prevent them from being in violation of the FCC rules and requirements. Applicants request that the commission grant CenturyTel of San Marcos and CenturyTel of Lake Dallas an Interim Order suspending the FCC's Order for three months, or until February 24, 2004. Applicants' contend the interim suspension will allow the commission to determine whether a further suspension until May 24, 2004 is warranted.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 28935.

TRD-200308146
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

♦ ♦ ♦

Petition for Suspension of Federal Communications Commission Requirement to Implement Local Number Portability

Notice is given to the public of the filing of an application with the Public Utility Commission of Texas (commission) on November 21, 2003, for suspension of the Federal Communications Commission (FCC) requirement to implement local number portability.

Docket Style and Number: Petition TXU Communications Telephone Company for Suspension of Federal Communications Commission Requirement to Implement Number Portability. Docket Number 28949.

The Petition: TXU Communications Telephone Company (Petitioner) seeks to suspend the FCC requirement to implement local number portability within six months after a request by a Commercial Mobile Radio Service provider. Under the FCC's rules the petitioner has six months to deploy local number portability after receipt of a bona fide request. Petitioner contends that it is unsure of its responsibilities and obligations with respect to the FCC's current deadline of November 24, 2003, to deploy local number portability, and that given the lack of FCC guidance with respect to important deployment issues, petitioner believes an interim order is necessary to prevent it from being in violation of the federal rules and requirements. Petitioner requests a one year suspension beginning after the issuance of a FCC order clarifying wireline carriers' obligations and resolving certain issues discussed in the petition.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 28949.

TRD-200308147
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Petition for Suspension of Federal Communications Commission Requirement to Implement Local Number Portability

Notice is given to the public of the filing of an application with the Public Utility Commission of Texas (commission) on November 21, 2003, for suspension of the Federal Communications Commission (FCC) requirement to implement local number portability.

Docket Style and Number: Petition of Fort Bend Telephone Company for Suspension of Federal Communications Commission Requirement to Implement Number Portability. Docket Number 28950.

The Petition: Fort Bend Telephone Company (Petitioner) seeks to suspend the FCC requirement to implement local number portability within six months after a request by a Commercial Mobile Radio Service provider. Under the FCC's rules the petitioner has six months to deploy local number portability after receipt of a bona fide request. Petitioner contends that it is unsure of its responsibilities and obligations with respect to the FCC's current deadline of November 24, 2003, to deploy local number portability, and that given the lack of FCC guidance with respect to important deployment issues, petitioner believes an interim order is necessary to prevent it from being in violation of the federal rules and requirements. Petitioner requests a one year suspension beginning after the issuance of a FCC order clarifying wireline carriers' obligations and resolving certain issues discussed in the petition.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) at 1-800-735-2989. All comments should reference Docket Number 28950.

TRD-200308148
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Extel Enterprises, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28944. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28944. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 22, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28944.

TRD-200308095

Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Preferred Carrier Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28945. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28945. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 22, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones

(TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28945.

TRD-200308096
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Cypress Communications Operating Company, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28946. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28946. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 22, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28946.

TRD-200308097
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 21, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Express Telephone Services, Inc., collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28947. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28947. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 22, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28947.

TRD-200308098
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 24, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Spruce Communications, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28956. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28956. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 23, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28956.

TRD-200308143
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Public Notice of Amendment to Interconnection Agreement

On November 24, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Bestline Communications, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28957. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28957. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 23, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those

issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28957.

TRD-200308144
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Public Notice of Intent to File Pursuant to P.U.C. Substantive Rule §26.215

Notice is given to the public of the filing, on November 24, 2003, with the Public Utility Commission of Texas (commission), a notice of intent to file a long run incremental cost (LRIC) study pursuant to P.U.C. Substantive Rule §26.215. The Applicant will file the LRIC study on or before December 8, 2003.

Docket Title and Number. Southwestern Bell Telephone, LP d/b/a SBC Texas's Application for Approval of LRIC Study for FibreMAN Service Introduction Pursuant to P.U.C. Substantive Rule §26.215, Docket Number 28955.

Any party that demonstrates a justiciable interest may file with the administrative law judge, written comments or recommendations concerning the LRIC study referencing Docket Number 28955. Written comments or recommendations should be filed no later than 45 days after the date of a sufficient study and should be filed at the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. You may call the Public Utility Commission Customer Protection Division at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200308145
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 25, 2003

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Public Notice of Interconnection Agreement

On November 21, 2003, Kerrville Telephone Company and Texas RSA 15B2 doing business as Five Star Wireless, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2004) (PURA). The joint application has been designated Docket Number 28948. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28948. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by December 22, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28948.

TRD-200308094
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: November 24, 2003

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Texas Department of Transportation

Public Notice - Advertising in TxDOT Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation is authorized by Texas Civil Statutes, Article 6144e to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Title 43, Texas Administrative Code, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, lists acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describes the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the 2005 edition of the *Texas State Travel Guide*, scheduled to be printed and available in January 2005, and the four quarterly issues of the *Texas Events Calendar*, beginning with the Summer 2004 calendar. The Summer 2004 calendar lists events scheduled for June, July, and August 2004. The Fall 2004 calendar lists September, October, and November 2004 events. The Winter 2004-2005 calendar lists December 2004, January 2005, and February 2005 events; and the Spring 2005 calendar lists events scheduled for March 2005, April 2005, and May 2005. The department is now accepting advertising for all monthly 2004 issues of *Texas Highways* magazine.

All entities and individuals on the mailing list will be contacted by mail sent out on January 5, 2004, and will have an opportunity to request a media kit. The media kit will contain rate card information, an order form, and samples of the respective travel literature. On and after February 5, 2004, the department will accept all insertion orders (in accordance with 43 TAC §23.10) received prior to the publication deadline on a first-come, first served basis or until all advertising space is filled. Insertion orders postmarked or received prior to February 5, 2004, for the *Texas State Travel Guide* will not be accepted.

All insertion orders will be stamped with the date they are received. Orders for premium space for the *Texas State Travel Guide* will be accepted only by mail postmarked on or after February 5, 2004. Advertisers must indicate ranked preference on all desired premium positions for the *Texas State Travel Guide*. If more than one insertion order for any premium position is received on the same day, the department will determine selection by a drawing held on February 20, 2004. Insertion orders for an inside front cover spread and inside back cover spread will take precedence over an inside front cover and inside back cover insertion order.

The advertising due dates for the *Texas Events Calendar* vary depending on the issue involved. The publication deadline for accepting advertising space in the *Texas Events Calendar* is February 13, 2004, for the Summer 2004 issue; May 14, 2004, for the Fall 2004 issue; August 13, 2004, for the Winter 2004-2005 issue; and November 12, 2004, for the Spring 2005 issue. The deadline for accepting materials for the Texas Events Calendar is February 27, 2004, for the Summer 2004 issue; May 28, 2004, for the Fall 2004 issue; August 27, 2004, for the Winter 2004-2005 issue; and December 1, 2004, for the Spring 2005 issue. The publication deadline for accepting advertising space in *Texas Highways* magazine is the 27th of the third month preceding the issue date. The deadline for accepting materials for *Texas Highways* magazine is seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or on a holiday, space and/or materials are due the preceding workday.

The *Texas State Travel Guide* is designed to encourage readers to explore and travel in Texas. The guide lists cities and towns alphabetically, featuring population figures and recreational travel sites for each, along with maps and 4-color photography. The guide also includes sections listing Texas lakes, state parks, state and national forests, and hunting and fishing information. The State of Texas distributes this vacation guide to travelers in Texas and to those who request information while planning to travel in Texas.

The *Texas Events Calendar* is published quarterly, corresponding with the seasons, to provide information about events happening in Texas throughout the year. The *Texas Events Calendar* includes festivals, art exhibits, rodeos, charity events, indoor and outdoor theatre productions, concerts, nature tours, and more, depending on the season. The State of Texas distributes this quarterly calendar to travelers in Texas and to those who request information on events happening around the state.

Texas Highways magazine is a monthly publication designed to encourage recreational travel within the state and to tell the Texas story to readers around the world. Accordingly, the content of the magazine is focused on Texas vacation, recreational, travel, or tourism related subjects, shopping opportunities in Texas and for Texas related products, various outdoor events, sites, facilities, and services in the state, transportation modes and facilities in the state, and other sites, products, facilities, and services that are travel related or Texas based, and that are determined by the department to be of cultural, educational, historical, or of recreational interest to *Texas Highways* readers.

The rate card information for potential advertisers in the *Texas State Travel Guide*, the *Texas Events Calendar*, and *Texas Highways* magazine are included in this notice.

TEXAS STATE TRAVEL GUIDE

Year 2005 Rate Base: 900,000
Space Closing: October 4, 2004
Materials Due: October 8, 2004
First Distribution: January 2005

Advertising Rates

ROP:	Gross	Net*
Full Page	$26,365	$22,410
Half (2) Page	$15,777	$13,410
One Fourth (1/4) Page	$ 9,212	$ 7,830
One Sixth (1/6) Page	$ 7,094	$ 6,030
Travel Directory Index	$ 3,529	$ 3,000

Premium Positions:	Gross	Net*
Cover 2 (Inside Front)	$39,494	$33,570
Cover 3 (Inside Back)	$37,059	$31,500
Cover 4 (Back)	$45,106	$38,340
Spread (Inside Front Cover Inside Back Cover)	$65,859	$55,980

*Commission: 15% to recognized agencies providing camera-ready materials.

Note: All rates are 4-color (no black and white). Run-of-book spreads are 2 times the page rate. Position request in 7 region editorial sections, add 10%. Rates for inserts, gatefolds, multi-title frequency advertising, and other special advertising will be quoted on request. Multiple fractional ads will be priced at the equivalent page rate.

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by October 8, 2004.

Texas Events Calendar

Advertising Rates/Due Dates

Year 2004/2005 Rate Base: 80,000 Circulation: Spring, Summer, Fall
75,000 Circulation: Winter

Black/White	1X Gross/Net	2X Gross/Net	4X Gross/Net
FULL PAGE	$1,600/$1,360	$1,550/$1,318	$1,500/$1,275
HALF PAGE	$1,100/$ 935	$1,075/$ 914	$1,025/$ 872
THIRD PAGE Square	$ 800/$ 680	$ 775/$ 659	$ 725/$ 617

COVERS (4-COLOR)	1X Gross/Net	2X Gross/Net	4X Gross/Net
COVER 2	$3,500/$2,975	$3,250/$2,763	$3,000/$2,550
COVER 3	$3,000/$2,550	$2,750/$2,338	$2,500/$2,125
COVER 4	$4,200/$3,570	$4,000/$3,400	$3,800/$3,230

Net rate reflects 15% commission to recognized agencies or advertisers providing camera-ready materials. Cash with order or net 30 from invoice date. All orders must be paid in full by material due date. Rates for inserts, multi-title frequency advertising, and other special advertising will be quoted on request.

Advertising Due Dates:

Issue Date	Space Closing	Materials Due
Summer 2004 (Jun, Jul, Aug-2004)	Feb. 13, 2004	Feb. 27, 2004
Fall 2004 (Sep, Oct, Nov-2004)	May 14, 2004	May 28, 2004
Winter 2004-5 (Dec-2004, Jan, Feb-2005)	Aug. 13, 2004	Aug. 27, 2004
Spring 2005 (Mar, Apr, May-2005)	Nov. 12, 2004	Dec. 1, 2004

TEXAS HIGHWAYS MAGAZINE

Advertising Rates

Four-Color	1x	3x	6x	12x	18x	24x
Full Page	$7120	$6764	$6550	$6337	$6123	$5910
2/3 Page	$5880	$5586	$5410	$5233	$5057	$4880
1/2 Page	$4626	$4395	$4256	$4117	$3978	$3840
1/3 Page	$3326	$3160	$3060	$2960	$2860	$2761
1/6 Page	$1830	$1739	$1684	$1629	$1574	$1519
Cover 2	$9100	$8645	$8372	$8099	$7826	$7553
Cover 3	$8700	$8265	$8004	$7743	$7482	$7221

Notes All rates are 4-color. Run-of-book spreads are 2 times Page Rate with frequency discounts applied to the cumulative total of pages scheduled. Rates for inside cover spreads, inserts, gatefolds, multi-title/frequency advertising, and other special advertising will be quoted on request. Preferred position, add 10% to all rates.

Commission: 15% to recognized agencies providing camera-ready materials.
Payment: Cash with order or net 30 from invoice date.
Space Deadline: 27th of the third month preceding issue date.
Materials Deadline: Seven days after space closing. When material or space closing dates fall on a Saturday, Sunday, or a holiday, space or materials are due the preceding workday.

Texas Highways Travel Discount Directory

Listings Fee

$50.00 If paid by June 11th, 2004
$65.00 If paid after June 11th, 2004
$30.00 Group rate (listings must be submitted together & paid by a single payment)

Space Advertising

Inside Front Cover $3200
Inside Back Cover $3060
Back Cover $3300
Full Page $2720
Half Page $1765

TRD-200308000
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 20, 2003

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Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 800 68 PILOT.

TRD-200307999
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 20, 2003

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Request for Proposal for Aviation Engineering Services-Decatur Municipal Airport

The City of Decatur through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT, Aviation Division, will solicit and receive proposals for professional aviation engineering design services described.

Airport Sponsor: City of Decatur, Decatur Municipal Airport. TxDOT CSJ No.:0402DECTR Scope: Provide engineering design services to extend and mark Runway 17-35; extend medium intensity runway lights; construct run-up pad Runway 17; expand apron; install runway end identifier lights Runway 35; and install erosion/sedimentation controls.

The DBE goal is set at 7%. TxDOT Project Manager is Alan Schmidt, P.E.

To assist in your proposal preparation the most recent Airport Layout Plan, 5010 drawing, and project narrative are available online, by selecting "Decatur Municipal Airport" at:

www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm

Interested firms shall utilize the Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address:

http://www.dot.state.tx.us/avn/avn550.doc

The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. (Note: The form is an MS Word template.)

Please note the new format for submission of a proposal for these services. Qualifications statements will not be utilized for this project. This will be a submission of a limited proposal for engineering services. The form AVN-550 must be utilized. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page.

Four completed, unfolded copies of Form AVN 550 must be postmarked by U. S. Mail by midnight January 6, 2004 (CDST). Mailing address: TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDST) on January 7, 2004; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. January 7, 2004 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Deason.

The consultant selection committee will be composed of aviation staff members. The final engineer selection by the committee will generally be made following the completion of review of proposals and/or engineer interviews. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at:

www.dot.state.tx.us/business/avnconsultinfo.htm

All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Deason, Grant Manager, or Alan Schmidt, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200307998
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: November 20, 2003

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How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TAC)*** is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE
Part I. Texas Department of Human Services
40 TAC §3.704.....950, 1820

The ***Table of TAC Titles Affected*** is cumulative for each volume of the ***Texas Register*** (calendar year).

Please use this form to order a subscription to the *Texas Register*, to order a back issue, or to indicate a change of address. Please specify the exact dates and quantities of the back issues required. You may use your VISA or Mastercard. All purchases made by credit card will be subject to an additional 2.1% service charge. Return this form to the Texas Register, P.O. Box 13824, Austin, Texas 78711-3824. For more information, please call (800) 226-7199.

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