TEXAS REGISTER

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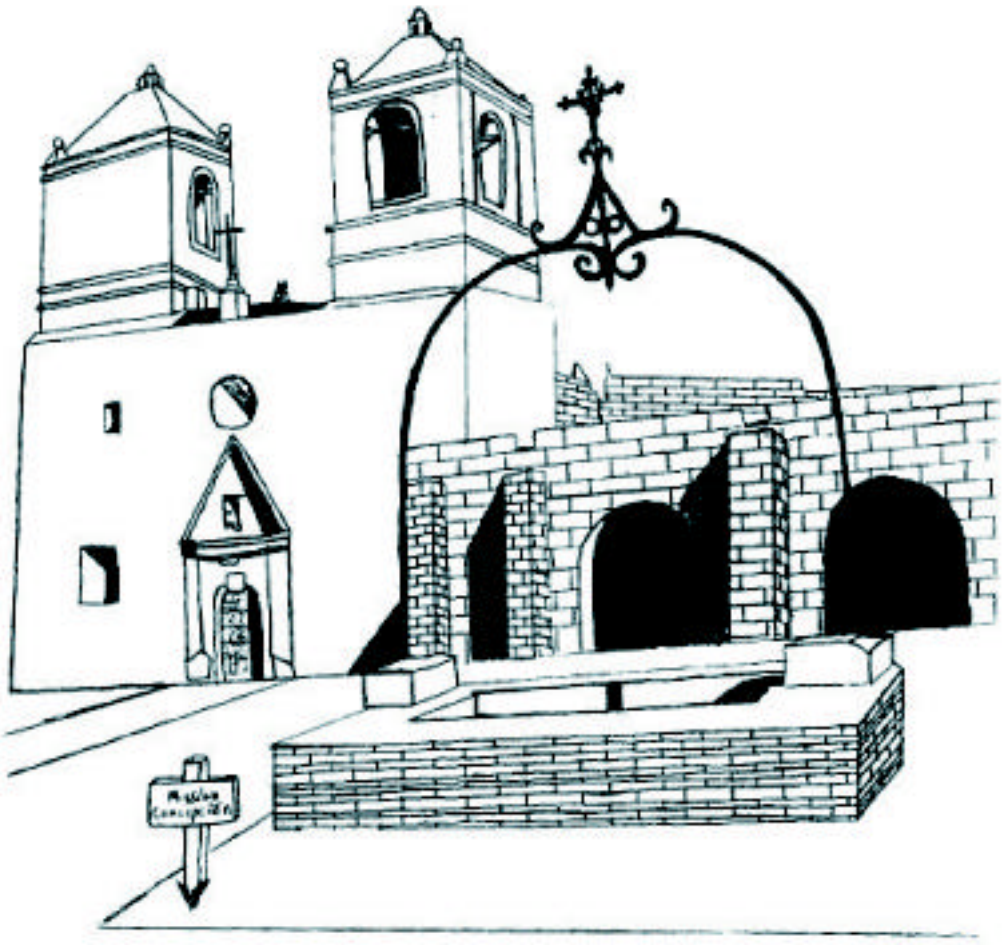

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Artist: *David Guzman*

11th Grade

Luling High School

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

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

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ATTORNEY GENERAL

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OFFICE OF THE ATTORNEY GENERAL

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

Opinions

Opinion No. JC-0206.

The Honorable Michael P. Fleming, Harris County Attorney, 1019 Congress, 15th Floor Houston, Texas 77002-1700, regarding whether the County Purchasing Act, Tex. Loc. Gov't Code Ann. §§262.021 - 262.035 (Vernon 1999 & Supp. 2000), applies to the purchases of a local government corporation created by a county under subchapter D, chapter 431 of the Transportation Code (RQ-0139-JC).

Summary.

Because §431.101 of the Transportation Code as amended by the Seventy-sixth Legislature exempts the contracts of a local government corporation from competitive bidding requirements applicable to the contracts of the local government that created it, the contracts of a local government corporation created by a county are not subject to the competitive bidding requirements of the County Purchasing Act. See Tex. Transp. Code Ann. §431.101(e) (Vernon Supp. 2000) (as added by Act of May 29, 1999, 76th Leg., R.S., ch. 983, §12, 1999 Tex. Gen. Laws 3763, 3768).

Opinion No. JC-0207.

Mr. James Nelson, Commissioner of Education, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, regarding whether a school district may charge tuition for students attending a prekindergarten program, and related question (RQ-0107-JC).

Summary.

Unless it has express statutory authority to do so, a school district may not charge tuition for any student attending a prekindergarten program or for a student who is not between the ages of five and twenty-two years old.

Opinion No. JC-0208.

The Honorable Michael A. Sheppard, District Attorney, 24th Judicial District, 307 North Gonzales, Cuero, Texas 77954, regarding whether a police officer who secretly records or broadcasts a suspect's conversation in a police car violates §16.02 of the Penal Code (RQ-0145-JC).

Summary.

A police officer who secretly records or broadcasts the conversation of a person seated in a police vehicle does not violate §16.02 of the Penal Code.

Opinion No. JC-0209.

The Honorable Sonya Letson, Potter County Attorney, 500 South Fillmore, Room 303, Amarillo, Texas 79101, regarding whether the Potter County Juvenile Board is authorized to contract with an attorney to represent the Board in an action brought against it by Potter County and related questions (RQ-0147-JC).

Summary.

The Potter County Juvenile Board is authorized to contract with an attorney to represent it in litigation. The Juvenile Board may pay its attorney's fees with funds in the juvenile probation department account in the county treasury without the approval of the Potter County Commissioners Court.

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

TRD-200002725
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 17, 2000

♦ ♦ ♦

Request for Opinions

RQ-0215-JC. Mr. Randall S. James, Commissioner, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, regarding the authority of an individual designated to handle disposition arrangements for a decedent to modify the terms of a prepaid funeral benefits contract, and related questions (Request No. 0215-JC)

Briefs requested by May 13, 2000

RQ-0216-JC. The Honorable Florence Shapiro, Chair, State Affairs Committee, Texas State Senate, P.O. Box 12068, 3E.12, Austin, Texas 78711, regarding the authority of a peace officer to detain a motorcycle driver for the sole purpose of determining whether the driver has liability insurance (Request No. 0216-JC).

Briefs requested by May 12, 2000

RQ-0217-JC. The Honorable Tony Goolsby, Chair, House Administration Committee, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding whether a municipality must competitively bid a contract with a temporary day labor agency (Request No. 0217-JC).

Briefs requested by May 11, 2000

TRD-200002764
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 19, 2000

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PROPOSED RULES

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

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

TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 12. WEIGHTS AND MEASURES

Subchapter A. GENERAL PROVISIONS

4 TAC §12.2

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

The Texas Department of Agriculture (the Department) proposes the repeal of §12.2, concerning an expiration date for Chapter 12, relating to Weights and Measures. The repeal of §12.2 is proposed because the establishment of an expiration date for Chapter 12 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The deletion of §12.2 eliminates the expiration date for Chapter 12.

Dolores Alvarado Hibbs, Deputy General Counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §12.016 which provides the Department with the authority to adopt rules to administer the Texas Agriculture Code.

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

§12.2. Expiration Provision.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002661
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-4075

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Chapter 19. QUARANTINES

Subchapter A. GENERAL QUARANTINE PROVISIONS

4 TAC §19.8

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

The Texas Department of Agriculture (the Department) proposes the repeal of §19.8 concerning an expiration date for Chapter 19, relating to Quarantines. The repeal of §19.8 is proposed because the establishment of an expiration date for Chapter 19 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The deletion of §19.8 eliminates the expiration date for Chapter 19.

Dolores Alvarado Hibbs, Deputy General Counsel, has determined that for the first five-year period the repeal is in effect,

there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §12.016 which provides the Department with the authority to adopt rules to administer the Texas Agriculture Code.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapters 12 and 71, Subchapter A.

§19.8. Expiration Provision.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002662
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-4075

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Subchapter F. LETHAL YELLOWING QUARANTINE

4 TAC §19.62

The Texas Department of Agriculture (the Department) proposes amendments to §19.62, concerning Lethal Yellowing Quarantine. The amendments are proposed to delete the following species of palms from the list of quarantined articles:*Phoenix roebelenii*, *Corpha taliera* and *Corpha utan*. There is no proof in the scientific literature that these palms are known to be hosts of lethal yellowing, and they pose no pest risk to palms grown in Texas. The amendments also add the following known palm host species of lethal yellowing,*Cheliocarpus chuco*, *Crysophila warsecewiczii*, *Cyphophoenix nucele*, *Howea fosteriana*, *Phoenix ruficola* and *Veitchia mcdanielsi*. Because these palms are used for landscaping as well as interiorscaping, they pose a pest risk to palms grown in Texas. The proposal also includes taxonomic changes, changing the name of genera *Veitchia* to *Adonidia* and *Chrysalidocarpus*, and *Neodupsis* to *Dypsis*, and species of Latan palm (*Latania*sp.) to *Latania lontaroides*. Sod in the lethal yellowing infested area can harbor the planthopper vector, *Myndus crudus*, and is also considered as a quarantined article. The proposed changes are made after consultation with Dr. Nigel A. Harrison, palm specialist at the University of Florida, Research and Education Center, Fort Lauderdale, and his published reports on the hosts of lethal yellowing phytoplasma. The proposed amendments prohibit the movement of quarantined articles from the quarantined areas described in Chapter 19, §19.61 to Texas.

Dr. Awinash Bhatkar, Coordinator for Plant Quality Programs, has determined that for the first five-year period the rule, as amended, is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Dr. Bhatkar also has determined that for each year of the first five years the rule, as amended, is in effect the public benefit anticipated as a result of enforcing the rule will be to mitigate the risk of introduction of lethal yellowing disease of palms from infested areas to palm growing area of Texas. There will be no anticipated costs to small or micro-businesses or to individuals required to comply with the amendments.

Comments on the proposal may be submitted to Awinash Bhatkar, Coordinator for Plant Quality Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later that 30 days from the date of publication of the proposal in the*Texas Register*.

The amendments are proposed under the Texas Agriculture Code,§71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules preventing the entry into a pest-free zone of any plant, plant product or substance found to be dangerous to the agricultural and horticultural interest of the zone.

The Texas Agricultural Code, Chapter 71 is affected by the proposal.

§19.62. Quarantined Articles.

(a) (No change.)

(b) The following articles are quarantined:

Figure: 4 TAC §19.62(b)

(c) (No change.)

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002663
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-4075

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Chapter 22. NURSERY PRODUCTS AND FLORAL ITEMS

4 TAC §22.6

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

The Texas Department of Agriculture (the Department) proposes the repeal of §22.6 concerning an expiration date for Chapter 22, relating to Nursery Products and Floral Items. The repeal of §22.6 is proposed because the establishment of an expiration date for Chapter 22 is no longer necessary due to

the enactment of legislation establishing a timeframe for review of agency rules. The deletion of §22.6 eliminates the expiration date for Chapter 22.

Dolores Alvarado Hibbs, Deputy General Counsel, has determined that for the first five-year period the repeal is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

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

Comments on the proposal may be submitted to Dolores Alvarado Hibbs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The repeal is proposed under the Texas Agriculture Code, §12.016 which provides the Department with the authority to adopt rules to administer the Texas Agriculture Code.

The code that will be affected by the proposal is the Texas Agriculture Code, Chapters 12 and 71, Subchapter B.

§22.6. Expiration Provision.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002664
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

Part 2. PUBLIC UTILITY COMMISSION OF TEXAS

Chapter 23. SUBSTANTIVE RULES

Subchapter F. QUALITY OF SERVICE

16 TAC §23.68

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

The Public Utility Commission of Texas (PUC) proposes the repeal of §23.68 relating to Embedded Customer Premises Equipment.

This section was required in 1985 by mandate of the Federal Communications Commission (FCC) which required state commissions to establish guidelines for incumbent local exchange companies (ILECs) to follow in the detariffing, transfer and valuation of embedded customer premises equipment. After reviewing this section, the commission believes that it is no longer relevant as the ILECs have fulfilled the requirements of the rule and the FCC Order that required the rule. Project Number 17709 has been assigned to this proceeding.

Martin Wilson, attorney, Legal Division, Office of Regulatory Affairs has determined that for each year of the first five-year period this repeal is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeal.

Mr. Wilson has determined that for each year of the first five years the repeal is in effect, the public benefit anticipated as a result of the repeal will be elimination of a rule that is no longer relevant. There will be no effect on small businesses or micro-businesses as a result of repealing this section. There is no anticipated economic cost to persons as a result of repealing this section.

Mr. Wilson has also determined that for each year of the first five years the proposed repeal 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.

Comments on the proposed repeal (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, within 30 days after publication. All comments should refer to Project Number 17709 - Repeal of §23.68.

This repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

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

§23.68. Embedded Customer Premises Equipment.

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002619
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-7308

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Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes new §25.90 relating to Market Power Mitigation Plans, new §25.91 relating to Generating Capacity Reports, and new §25.401 relating to Share of Installed Generation Capacity. The proposed new rules will implement provisions of the Public Utility Regulatory Act (PURA) §§39.154, 39.155, 39.156, and 39.157. Section 25.90 establishes requirements and procedures for utilities and power generation companies that own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region to file market

power mitigation plans. Section 25.91 establishes reporting requirements and procedures for each person, power generation company, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in the state to file annual generating capacity reports. Section 25.401 establishes initial filing requirements and components of the calculation method to be used in determining if a power generation company owns and controls more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region. Project Number 21081 has been assigned to this proceeding.

Project Number 21081, *Market Power Mitigation Plans and Generating Capacity Reports*, was established in July 1999 as part of the plan for implementing Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543, 2591 (Vernon) (codified as an amendment to the Public Utility Regulatory Act, Texas Utilities Code Annotated §§39.154, 39.155, 39.156, and 39.157). Senate Bill 7, the Electric Restructuring Act, amended several sections of the Public Utility Regulatory Act (Vernon 1998 & Supplement 2000) (PURA) and became effective September 1, 1999. The commission staff posted questions for comment on its Internet site on December 7, 1999, and published an invitation to comment in the *Texas Register* on December 3, 1999 (24 TexReg 11035). The staff prepared drafts of §25.90 and §25.91 in January 1999, which were discussed at a workshop held on January 31, 2000.

After the workshop, new §25.401 relating to Share of Installed Generation Capacity was added to Project Number 21081 to provide a means to address the calculation that will be made to determine the share of installed generation capacity that a power generation owns and controls in a power region. Proposed §25.90 and §25.91 are primarily reporting requirements and do not have adequate scope to address the calculation issues. Proposed §25.91 requires the reporting of data that will be used in determining the share of installed generation capacity and assessing market power, and proposed §25.90 requires the filing of market power mitigation plans after it has been determined that a utility or power generation company has more than 20% of the installed generation capacity.

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules.

When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

In addition, the commission requests that interested parties specifically address the following issue pertaining to §25.401, Share of Installed Generation Capacity: PURA §39.154(d) defines the term "installed generation capacity" in terms of generation capacity that is "potentially marketable." Subsection (e)(2) of the proposed rule identifies several categories of generation capacity that are not considered to be potentially marketable. The commission invites comments on whether these categories of generation capacity should be excluded from the denominator.

Mr. Richard Greffe, Senior Economist, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed 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. Greffe has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the section will be the protection of public interest and the implementation of a process to mitigate market power that may result from the ownership and control of more than 20% of the installed generation capacity in a power region. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Mr. Greffe has also determined that for each year of the first five years the proposed sections are 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 under Government Code §2001.029 at the commission's offices, located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, June 1, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed new sections (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, within 25 days after publication. Reply comments may be submitted within 35 days after publication. Parties are also requested to e-mail an electronic copy of comments to richard.greffe@puc.state.tx.us, if possible.

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 21081.

Subchapter D. RECORDS, REPORTS, AND OTHER REQUIRED INFORMATION

16 TAC §25.90, §25.91

The new sections are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2000) (PURA), 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 §39.154, which requires the commission to determine the percentage shares of installed generation capacity that are owned and controlled by a utility or a power generation company; §39.155, which grants the commission the authority to assess market power and to require the filing of generation capacity reports; §39.156, which grants the commission the authority to require the filing of market power mitigation plans; and §39.157, which grants the commission the authority to address market power and to monitor the market shares of installed generation capacity to ensure that the limitations in

PURA §39.154 (relating to Limitation of Ownership of Installed Capacity) are not exceeded.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 31.002, 39.154, 39.155, 39.156, 39.157, and 39.264.

§25.90. Market Power Mitigation Plans.

(a) Application. An electric utility or power generation company owning and controlling more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region prior to December 1, 2000, shall file a market power mitigation plan with the commission not later than December 1, 2000. An electric utility or power generation company owning and controlling more than 20% of the installed generation capacity located in, or capable of delivering electricity to, a power region after December 1, 2000, shall file a market power mitigation plan as directed by the commission.

(b) Initial information filing. Each utility or power generation company that owns and controls, either separately or in combination with its affiliates, more than 10,000 megawatts (MW) of electric generation capacity located in a power region that is partly or entirely within the state shall file a calculation by September 1, 2000, showing its percentage share of the installed generation capacity in the power region. The calculation shall be made pursuant to the requirements of §25.401 of this title (relating to Share of Installed Generation Capacity). The filing must include detailed information that will allow the commission to replicate the calculation. At a minimum, the filing must include an itemized list of all generating units owned in whole or in party by the utility or power generation company and its affiliates. Generating units should be identified by name, capacity rating, ownership, location, and reliability council. The filing must also include the transmission import capacity amounts that are to be included in the numerator and the denominator of the calculation and an explanation of how the transmission capacity amounts were determined.

(c) Market power mitigation plan. A market power mitigation plan is a written proposal by an electric utility or a power generation company for reducing its ownership and control of installed generation capacity as required by the Public Utility Regulatory Act (PURA) §39.154. A market power mitigation plan may provide for:

(1) the sale of generation assets to a nonaffiliated person;

(2) the exchange of generation assets with a nonaffiliated person located in a different power region;

(3) the auctioning of generation capacity entitlements as part of a capacity auction required by PURA §39.153;

(4) the sale of the right to capacity to a nonaffiliated person for at least four years; or

(5) any reasonable method of mitigation.

(d) Filing requirements. The plan shall be in a form prescribed by the commission, and it shall include all supporting information necessary for the commission to fully understand and evaluate the plan. On a case-by-case basis, the commission will require the electric utility or power generation company to provide any additional information the commission finds necessary to evaluate the plan.

(e) Procedure. The commission shall approve, modify, or reject a plan within 180 days after the date of filing. The commission may not modify the plan to require divestiture by the electric utility or power generation company.

(f) Commission determinations. In reaching its determination under subsection (e) of this section, the commission shall consider:

(1) the degree to which the electric utility's or power generation company's stranded costs, if any, are minimized;

(2) whether on disposition of the generation assets the reasonable value is likely to be received;

(3) the effect of the plan on the electric utility's or power generation company's federal income taxes;

(4) the effect of the plan on current and potential competitors in the generation market;

(5) whether the plan provides adequate mitigation of market power; and

(6) whether the plan is consistent with the public interest.

(g) Request to amend or repeal mitigation plan. An electric utility or power generation company with an approved mitigation plan may request to amend or repeal its plan. On a showing of good cause, the commission shall modify or repeal the mitigation plan.

(h) Approval date. If an electric utility's or power generation company's market power mitigation plan is not approved before January 1 of the year it is to take effect, the commission may order the electric utility or power generation company to auction generation capacity entitlements according to PURA §39.153, subject to commission approval, of any capacity exceeding the maximum allowable capacity prescribed by PURA §39.154 until the time the mitigation plan is approved. An auction held under this subsection shall be held not later than 60 days after the date the order is entered.

§25.91. Generating Capacity Reports.

(a) Application. This section applies to each person, power generation company, municipally owned utility, electric cooperative, and river authority that owns generation facilities and offers electricity for sale in this state.

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

(1) Nameplate rating - The full-load continuous rating of a generator under specified conditions as designated by the manufacturer.

(2) Summer net dependable capability - The capacity rating in megawatts (MW) or kilowatts (KW) for a generating unit that reflects the maximum capacity that the unit can sustain over a specified period of time as modified for summer season limitations and reduced by the capacity required for station services and auxiliaries.

(c) Filing requirements. Reporting parties shall file reports with the commission by the last working day of February each year, for the immediately preceding calendar year. Filings shall be made using a form prescribed by the commission.

(d) Report attestation. A report submitted pursuant to this section shall be attested to by an owner, partner, or officer of the reporting party under whose direction the report was prepared.

(e) Confidentiality. The reporting party may designate information that it considers to be confidential. Information designated as confidential will be treated in accordance with the standard protective order issued by the commission applicable to generating capacity reports.

(f) Capacity ratings. Generating unit capacity will be reported at the summer net dependable capability rating as determined by the requirements of the applicable reliability council or independent organization, except as follows:

(1) Renewable resource generating units that are not dispatchable, will be reported at the actual capacity value during the most recent peak season, and the report will include data supporting the determination of the actual capacity value;

(2) Generating units that will be connected to a transmission and distribution system and operating within 12 months will be rated at the nameplate rating.

(g) Reporting requirements.

(1) Each reporting party shall provide its information concerning generation capacity (in MW) and sales (in megawatt-hours (MWh)) on a power region-wide basis and for that portion of a power region in the state:

(A) total capacity of installed generating facilities that are connected with a transmission and distribution system;

(B) total capacity of generating facilities that will be connected with a transmission and distribution system and operating within 12 months;

(C) total affiliate installed generation capacity;

(D) total amount of capacity available for sale to others;

(E) total amount of capacity under contract to others;

(F) total amount of capacity dedicated to its own use;

(G) total amount of capacity that has been subject to auction as approved by the commission;

(H) total amount of capacity that will be retired within 12 months;

(I) annual capacity sales to affiliated retail electric providers (REPs);

(J) annual wholesale energy sales;

(K) annual retail energy sales; and

(L) annual energy sales to affiliate REPS;

(2) Each reporting party shall provide the following information for each generating unit it owns in whole or in part:

(A) Name;

(B) Location by county, utility service area, power region, reliability council, and, if applicable, transmission zone;

(C) Capacity rating (MW) as specified in subsection (f) of this section;

(D) Annual generation (MWh);

(E) Type of fuel or nonfuel resource;

(F) Technology of natural gas generator;

(G) Date of commercial operation;

(H) Annual heat rate;

(I) Annual availability factor;

(J) Annual capacity factor;

(K) Annual outage rate;

(L) Annual hours connected to load; and

(M) Planned retirement date if within 12 months.

(3) Each reporting party shall identify the name and capacity rating of each generating unit that does not generate electricity sold at wholesale.

(4) Each reporting party shall identify the name and capacity rating of each generating unit that is partly owned by other parties. For each such unit, it shall identify the other owners and their respective ownership percentages.

(5) Each reporting party shall identify the name and capacity rating of each generating unit that it owns but does not control. For each such unit, it shall identify the controlling party and explain the nature of the other party's control of the unit.

(6) Each reporting party shall identify the name and capacity rating of each generating unit that is located on the boundary between two power regions and able to deliver electricity directly into either power region; and the party shall report the total sales from each such unit for the preceding year by power region.

(7) Each reporting party that is subject to the Public Utility Regulatory Act (PURA) §39.154(e) shall identify the name and capacity rating of each "grandfathered" generating unit that it owns, and it shall also provide copies of any applications to the Texas Natural Resources Conservation Commission (TNRCC) for a permit for the emission of air contaminants related to the grandfathered units.

(8) Each reporting party shall identify the name of the generating unit and the amount of capacity that has been designated "must-run" by the independent organization in the power region.

(9) Each reporting party shall identify the amount of transmission import capacity that it has reserved during the summer peak period for the purpose of importing electricity into the power region.

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

Filed with the Office of the Secretary of State, on April 14, 2000.

TRD-200002652
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-7308

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Subchapter O. UNBUNDLING AND MARKER POWER

Division 4. OTHER MARKET POWER ISSUES

16 TAC §25.401

This new section is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 & Supplement 2000) (PURA), 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 §39.154, which requires the commission to determine the percentage shares of installed generation capacity that are owned and controlled by a utility or a power

generation company; §39.155, which grants the commission the authority to assess market power and to require the filing of generation capacity reports; §39.156, which grants the commission the authority to require the filing of market power mitigation plans; and §39.157, which grants the commission the authority to address market power and to monitor the market shares of installed generation capacity to ensure that the limitations in PURA §39.154 (relating to Limitation of Ownership of Installed Capacity) are not exceeded.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 14.003, 31.002, 39.154, 39.155, 39.156, 39.157, and 39.264.

§25.401. Share of Installed Generation Capacity.

(a) Application. The provisions of this section apply to power generation companies.

(b) Share of installed generation capacity. The percentage share of installed generation capacity for a power generation company will be determined by dividing the capacity owned and controlled by the power generation company in a power region by the total installed generation located in, or capable of delivering electricity to, the power region.

(c) Capacity ratings. For purposes of this section, generating unit capacity ratings will be consistent with the requirements of §25.91(f) of this title (relating to Generating Capacity Reports). The commission may revise reported capacity ratings if they are found to be incorrect.

(d) Installed generation capacity of a power generation company.

(1) In determining the percentage shares of installed generation capacity under the Public Utility Regulatory Act (PURA) §39.154, the commission shall combine capacity owned and controlled by a power generation company and any entity that is affiliated with that power generation company within the power region, reduced by the installed generation capacity of those facilities that are made subject to capacity auctions under PURA §39.153(a) and (d).

(2) In determining the percentage shares of installed generation capacity, the commission shall increase the installed generation capacity owned and controlled by a power generation company by the transmission import capacity that the power generation company reserves during the summer peak period for the purpose of importing electricity into the power region.

(3) In determining the percentage shares of installed generation capacity owned and controlled by a power generation company under PURA §39.154 and §39.156, the commission shall, for purposes of calculating the numerator, reduce the installed generation capacity owned and controlled by that power generation company by the installed generation capacity of any "grandfathered facility" within an ozone nonattainment area as of September 1, 1999, for which that power generation company has commenced complying or made a binding commitment to comply with PURA §39.264. This subsection applies only to a power generation company that is affiliated with an electric utility that owned and controlled more than 27% of the installed generation capacity in the power region on January 1, 1999. The commission will consider a permit application to the Texas Natural Resource Conservation Commission (TNRCC) to be adequate evidence that the power generation company has commenced complying or made a binding commitment to comply with PURA §39.264.

(e) Total installed generation. The total installed generation will consist of the installed generation capacity that is located in, or capable of delivering electricity to, a power region.

(1) Installed generation capacity will include all potentially marketable electric generation capacity. Except as provided in paragraph (2) of this subsection, installed generation capacity will include:

(A) generating facilities that are connected with a transmission and distribution system;

(B) generating facilities used to generate electricity for consumption by the person owning or controlling the facility;

(C) generating facilities that will be connected with a transmission and distribution system and operating within 12 months; and

(D) generating facilities that are located on the boundary between two power regions and are able to deliver electricity directly into either power region, except that the capacity of such facility shall be allocated between the power regions based on the share of its total electric energy that the facility sold in each power region during the preceding year.

(2) Installed generation capacity will not include:

(A) generating facilities that have a nameplate rating equal to or less than 1 megawatt (MW);

(B) generating facilities that are used for backup purposes and do not generate electricity that is sold at wholesale;

(C) generating facilities that are used to generate electricity for consumption by the person owning or controlling the facility and do not generate electricity that is sold at wholesale;

(D) cogeneration facilities that do not generate electricity that is sold at wholesale;

(E) generating facilities that will be retired within 12 months;

(F) generating facilities that have been designated as "grandfathered" facilities pursuant to subsection (d)(3) of this section; and

(G) generating capacity that has been designated "must-run" by the independent organization in the power region.

(3) The amount of installed generation capacity that is capable of delivering electricity to a power region will be determined by:

(A) the import transmission capacity during the summer peak period of the alternating current (AC) transmission interconnections between the power region at issue and other power regions; and

(B) the import capacity during the summer peak period of the reliable direct current (DC) interconnections between the power region at issue and other power regions.

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

Filed with the Office of the Secretary of State, on April 14, 2000.

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Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
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Chapter 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §25.107, §25.108

The Public Utility Commission of Texas (commission) proposes new §25.107, relating to Certification of Retail Electric Providers, and new §25.108, relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges. The proposed new §25.107 establishes requirements for certification of retail electric providers (REPs), application procedures, requirements for maintaining certificates, and provisions for suspension and revocation of certificates, as well as related administrative penalties. The proposed new §25.108 imposes additional financial requirements on REPs who will be billing and collecting transition charges resulting from securitization by utilities. Project Number 21082 has been assigned to this proceeding.

Project Number 21082, *Certification of Retail Electric Providers and Registration of Power Generation Companies and Aggregators; Forms*, was established in July 1999 as one of many projects to implement Senate Bill 7, Act of May 21, 1999, 76th Legislature, Regular Session, chapter 405, 1999 Texas Session Law Service 2543 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated §§39.351, 39.353, 39.354, 39.3545, 39.356, and 39.357). Senate Bill 7, the Electric Restructuring Act, amends several sections of the Public Utility Regulatory Act and became effective September 1, 1999. In Project Number 21082, the commission staff posted questions for comment on its Internet site on October 20, 1999 and published an invitation to comment in the *Texas Register* on October 22, 1999 (24 TexReg 9434). The staff prepared a draft of §25.107 in December 1999, which was discussed at a workshop held on December 15, 1999. Written comments were received and used to prepare a second draft of §25.107, which was discussed at a workshop held on January 28, 2000.

The commission discussed a staff recommendation for publication at its open meeting on March 23, 2000. On that occasion, written comments from parties were invited on that recommendation and staff was directed to prepare a revised recommendation for publication of rules. A revised staff recommendation was filed on April 6, 2000, and considered and amended at the open meeting held on April 12, 2000.

Although also a part of this project, the commission's proposed rules concerning the registration of aggregators and power marketers have been published on a different timeline. For more information on those proposed rules, see the March 17, 2000 *Texas Register* (25 TexReg 2240).

The commission seeks comments on the proposed rules from interested persons. Parties should organize their comments in a manner that parallels the organization of the proposed rules. The rule is written in the form of a list of requirements for REPS to obtain and maintain certification. Provisions are stated as ongoing standards and subsequently differentiated for the application stage only when necessary. Comments proposing alternate language should work within this structure as much as possible.

When commenting on specific subsections of the proposed rules, parties are encouraged to describe "best practice" examples of regulatory policies, and their rationale, that have been proposed or implemented successfully in other states already undergoing electric industry restructuring, if the parties believe that Texas would benefit from application of the same policies. The commission is only interested in receiving "leading edge" examples which are specifically related and directly applicable to the Texas statute, rather than broad citations to other state restructuring efforts.

The subject of financial requirements necessary for the certification of a REP dominated discussion of staff drafts of the proposed rule in workshops and in written comments. However, detailed discussion was constrained on the topic of standards that the REPs should meet for the purposes of billing and collecting transition charges due to the fact that several securitization dockets were open when public comment was invited (See Docket Number 21527, *Application of TXU Electric Company for a Financing Order to Securitize Regulatory Assets and Other Qualified Costs*, Docket Number 21528, *Application of Central Power and Light Company for a Financing Order to Securitize Regulatory Assets and other Qualified Costs*, and Docket Number 21665, *Application of Reliant Energy, Incorporated for a Financing Order to Securitize Regulatory Assets and other Qualified Costs.*). As a result, the proposed new §25.108 includes financial requirements that have not yet received the benefit of public input through workshop discussions in the rulemaking process.

The financial standards proposed in these rules are designed to grant all qualified REPs a readily accessible opportunity to obtain certification and conduct business with the transmission and distribution utilities on a statewide basis, while protecting customer deposits and advance payments, and protecting all payments of transition charges resulting from securitization.

The scheme of financial standards proposed in these rules to accomplish the above stated purposes has three additive components that are found in the first three paragraphs of §25.107(f): (1) three alternative credit quality standards for certification as a REP; (2) a financial standard for protecting customer deposits and other advance payments made to the REP; and (3) a financial standard and procedure for REPs to bill and collect any transition charges resulting from securitization. These credit standards apply to a REP's business with transmission and distribution utilities serving Texas, as well as to any electric cooperatives or municipal utilities electing customer choice. A discussion of each standard follows below.

The first financial component of this scheme is found in §25.107(f)(1) and addresses the credit quality standards for a REP to be certificated to provide retail electric service in Texas. This credit quality component provides three alternative tests for certification: (1) demonstration of $50 million of net assets or equity; (2) demonstration of an investment grade credit rating; or (3) demonstration of $100,000 in cash resources.

The second component of the financial standards of these proposed rules is financial backing for customer payments. The proposed rules require that the REP maintain the cash

resources necessary to cover all customer deposits and other advance payments outstanding at any given time in case the REP is unable or unwilling to meet its financial obligations. This standard requires that the REP maintain on-going records for all such payments received from and outstanding to its customers.

For the third financial component of standards proposed in these rules, the commission proposes §25.108, relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges. The proposed section is referred to as a certification criterion in §25.107 and replicates the terms and conditions for activities that have been approved in Docket Number 21528. The commission proposes that these standards be applied statewide for all REPs that engage in the billing and collection of transition charges. The commission invites comment on whether the statewide standards established by rule might differ from those adopted in financing orders. If standards are adopted in this rulemaking that differ from any financing orders issued prior to the adoption of rules in this rulemaking, the REPs that are subject to those financing orders will continue to be subject to those orders until the written confirmation required by the financing orders is received from each of the credit rating agencies that have rated the transition bonds that the rule's different standards will not cause a suspension, withdrawal, or downgrade of the ratings on the transition bonds.

The extent to which any customer protection provisions, beyond the protection of customer deposits and advance payments, should be addressed in this rule is another issue that prompted considerable debate. Instead of eliminating all mention of such protections, and instead of articulating specific terms and conditions on a select few protection topics, these proposed rules state several customer protection provisions in the form of key principles. Each provision states a tenet of customer protection as a baseline that also allows for more specificity to be decided elsewhere. The existence of such a list in these rules implementing PURA §39.352 serves several functions. First, it briefly indicates the scope of the requirements a prospective REP must prepare to meet under the statute pertaining to the certification of REPs. Second, it allows the commission flexibility to address the details of the provisions in other rulemakings pertaining to customer protection. Third, it provides a baseline that can be used to address complaints by affected parties that occur before other customer protection rules are complete or in the absence of adequate detail in any relevant commission rules.

In addition to comments on other provisions of the rules, the commission requests that parties specifically address the following two issues relating to the financial scheme described in the previous paragraphs, a third issue related to technical and managerial requirements, and a fourth issue related to reporting requirements for REPs.

1. Concerning §25.107(f)(1), relating to financial resources required for credit quality:

(A) To what extent does the approach of this provision, and the three credit quality alternatives in particular, achieve the goals of sufficient financial creditworthiness to promote fair competition and minimal financial barriers to entry to the market place?

(B) How do the credit quality standards that are set in this rule integrate with the expected credit quality standards to be established by an independent organization, as defined in PURA §31.151(b), and how should any differences be addressed?

2. Concerning §25.107(f)(2), Financial resources required for customer protection, do the financial standards set in paragraph (2) adequately protect the customers of small REPs against potential harmful effects of financial derivatives that may arise from buyer speculation in or seller default of these securities? If not, how should they be addressed?

3. Concerning §25.107(g), should the commission further distinguish between the continuing requirements for certified REPs and the application requirements, especially before retail choice begins?

4. Finally, concerning the annual report required by §25.107(i), Requirements for updating or changing the terms of a REP certificate: What circumstances should the commission consider in establishing a reporting period and due date for the report?

Ms. Jan Bargen, Senior Policy Analyst, Office of Policy Development, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Bargen has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be protecting Texas electric customers from REPs who do not have adequate resources or experience to provide retail electric service. There will be no effect on small businesses or micro-businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Bargen has also determined that for each year of the first five years the proposed sections are in effect there should be no affect 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 under Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Thursday, June 15, 2000, at 9:30 a.m. in the Commissioners' Hearing Room.

Comments on the proposed amendment and new rules (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, within 28 days after publication. Reply comments may be submitted within 41 days after publication. Parties are also requested to e-mail an electronic copy of comments to *jan.bargen@puc.state.tx.us*, if possible.

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 21082.

These new rules are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998 and Supplement 2000) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and ju-

risdiction, and specifically, PURA §39.352 which requires the commission to grant certificates to applicants who demonstrate sufficient qualification to provide retail electric service; §39.356, which grants the commission authority to establish terms under which the commission may suspend or revoke a retail electric provider's certification, and §39.357, which grants the commission authority to impose an administrative penalty for violations of §39.356.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 39.352, 39.356, and 39.357.

§25.107. Certification of Retail Electric Providers (REPs).

(a) Application. This section applies to all persons who seek to provide electric service to retail customers in Texas on or after the date of customer choice, as established by Public Utility Regulatory Act (PURA) Chapter 39, or as a provider of retail electric service in the Customer Choice Pilot Projects, as established under PURA §39.104 and §39.405. This section does not apply to the state, political subdivisions of the state, electric cooperatives or municipal corporations. An electric cooperative or municipally owned utility participating in customer choice may offer electric energy and related services at unregulated prices directly to retail customers who have customer choice without obtaining certification as a REP.

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

(1) Continuous and reliable electric service - Electric power service provided at retail by a retail electric provider (REP), consistent with the customer's terms and conditions of service, uninterrupted by unlawful or unjustified action or inaction of the REP.

(2) Customer - Any entity who has applied for, has been accepted, or is receiving retail electric service from a REP for use on an end-use basis.

(3) Person - Includes an individual, a partnership of two or more persons having a joint or common interest, a mutual or cooperative association, and a corporation, but does not include an electric cooperative or a municipal corporation.

(4) Retail electric provider - A person that sells electric energy to retail customers in this state. As provided in PURA §31.002(17), a retail electric provider may not own or operate generation assets. As provided in PURA §39.353(b), a REP is not an aggregator.

(5) Residential customer - An end user consuming power for personal, family or household purposes, as defined in statewide transmission and distribution utility tariffs.

(6) Revocation - The cessation of all REP business operations in the state of Texas, pursuant to commission order.

(7) Suspension - The cessation of all REP business operation in the state of Texas associated with obtaining new customers, pursuant to commission order.

(c) Application for REP certification.

(1) After the date of customer choice, or as a participant in the Customer Choice Pilot Projects, a person, including an affiliate of an electric utility, may not provide retail electric service in the state unless the person is certified by the commission as a retail electric provider in accordance with PURA §39.352 and this section.

(2) A retail electric provider may apply for certification any time after September 1, 2000. A certificate granted pursuant to this section is not transferable without prior approval by the commission.

(3) An application for certification shall be made on a form approved by the commission, verified by oath or affirmation, and signed by an applicant's owner or partner, or an officer of the applicant. Applications may be obtained in the Central Records division of the Public Utility Commission of Texas during normal business hours, or from the commission's Internet site. Each applicant shall file its application with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and Other Documents).

(4) The applicant may identify certain information or documents submitted that it believes to contain proprietary or confidential information. Applicants may not designate the entire application as confidential. Information designated as proprietary or confidential will be treated in accordance with the standard protective order issued by the commission for use with applications for certification as a REP. If and when a public information request is received for information designated as confidential, the applicant or REP has the burden of establishing that information filed pursuant to this rule is proprietary or confidential.

(5) Except where good cause exists to extend the time for review, the presiding officer shall issue an order stating whether an application is deficient or complete within 20 days of filing. Deficient applications and those without necessary supporting documentation will be rejected without prejudice to the applicant's right to reapply.

(6) While the application is pending, an applicant shall inform the commission of any material change in the information provided in the application within ten days of any such change.

(7) The commission will make an effort, where the facts of the case permit, to insure that applications filed simultaneously are resolved simultaneously. Except where good cause exists to extend the time for review, the commission shall enter an order approving, rejecting, or approving an application with modifications within 90 days of filing an application.

(8) A certificate granted pursuant to this section shall continue in force until further order of the commission.

(9) A certificate granted pursuant to this section shall not be construed to vest exclusive service or property rights in and to the area for which the certificate is granted.

(d) REP certification requirements based on service area. As a requisite for obtaining and maintaining certification, a REP must designate a service area defined by either paragraph (1) or (2) of this subsection, and meet the certification requirements designated therein.

(1) Option 1. For REPs defining service areas by geography:

(A) A REP must designate one of the following categories as its geographical service area:

(i) The geographic area of the city limits of a municipality and its extra-territorial jurisdiction, (indicating the zip codes applicable to that area); or

(ii) The geographic area of an entire county, (indicating the zip codes applicable to that area); or

(iii) A combination of the geographic areas described in clause (i) and (ii) of this subparagraph; or

(iv) The geographic area of the entire state of Texas; (indicating the zip codes applicable to that area); or

(v) The service area of specific transmission and distribution utilities, and/or municipal utilities or electric cooperatives in which competition is offered; or

(vi) The geographic area of Electric Reliability Council of Texas (ERCOT) or territory of another independent organization to the extent it is within Texas.

(B) A REP with a geographical service area is subject to all subsections of this section, including those pertaining to administration, financial, technical and managerial, customer protection, and reporting requirements, as applicable.

(C) The commission shall decide whether to grant a certificate to an applicant proposing to provide retail electric service to a geographical service area in Texas based on:

(i) Provision of all of the information required of the applicant in the form, *Application for a Certificate to Provide Retail Electric Service*, approved by the commission.

(ii) Whether the applicant has met the business name, office, and threshold residential service level requirements specified in subsection (e) of this section.

(iii) Whether the applicant has demonstrated that it possesses the financial and technical resources to provide continuous and reliable electric service to its customers in the area for which certification is sought and the technical and managerial ability to supply electricity at retail in accordance with customer contracts, pursuant to subsections (f) and (g) of this section.

(iv) Whether the applicant has demonstrated that it possesses the resources needed to meet the customer protection requirements, disclosure requirements, and marketing guidelines as specified in subsection (h) of this section.

(v) Whether the configuration of the proposed geographic area, if any, would discriminate in the provision of electric service to any customer because of race, creed, color, national origin, or any other basis prohibited by law or by subsection (h)(1) of this section.

(D) If the presiding officer determines that an applicant does not possess resources sufficient to serve the geographical area designated by the applicant, the presiding officer shall notify the applicant of the deficiencies and allow the applicant to designate a different geographical service area commensurate with its resources. If the applicant designates no suitable area within a reasonable time, the application shall be denied.

(2) Option 2 - For REPs defining service areas by customers. As an alternative to a geographical service area, a REP may define a service area by a specific list of customers, each of whom contract for one megawatt or more of capacity. The applicant shall be certified as a REP only for purposes of serving the named customers.

(A) To obtain certification under this paragraph, an applicant must file with the commission a signed, notarized affidavit from each individual retail customer with which it has contracted to provide one megawatt or more of capacity. The affidavit shall state that the customer is satisfied that the REP meets the financial, technical and managerial, and customer protection standards prescribed in subsections (f)(2), (g), and (h) of this section. The one-megawatt threshold may not be met by aggregation of individual electricity customers.

(B) A REP whose service area is defined by customers shall meet the administrative requirements specified in subsection (e) of this section.

(C) A REP whose service area is defined by customers shall meet the financial requirements for billing and collection of transition charges pursuant to subsection (f)(3) of this section, if applicable.

(D) The commission will grant a certificate to an applicant under this paragraph upon a finding that the affidavits for each designated customer have been received and that all requirements of this paragraph are met.

(E) A REP certified pursuant to this paragraph may be authorized to serve additional customers by amending its certificate pursuant to subsection (i)(6) of this section.

(F) A REP certified pursuant to this paragraph is subject to reporting requirements specified in this section.

(e) Administrative requirements. As a requisite for obtaining and maintaining certification, a REP must meet the following requirements concerning business names, office access, and percentage of electricity sold to residential customers.

(1) Names on certificates. All retail electric service shall be provided in the names under which the certificate was granted. If the applicant is a corporation, the commission shall issue the certificate in the corporate name of the applicant.

(A) No more than two assumed names may be authorized for use by any one REP at one time.

(B) Business names shall not be deceptive, misleading, vague, otherwise contrary to §25.272 of this title (relating to Code of Conduct for Electric Utilities and Their Affiliates), or duplicative of a name previously approved for use by an existing REP certificate holder.

(C) The commission shall review any names in which the applicant proposes to do business. If the commission determines that any requested name does not meet the requirements of subparagraph (B) of this paragraph, it shall notify the applicant that the requested name may not be used by the REP. A REP will be required to amend its application to provide at least one suitable name in order to be certificated.

(2) Office requirements. A REP shall continuously maintain an office located within Texas for the purpose of providing customer service, accepting service of process, and making available in that office books and records sufficient to establish the retail electric provider's compliance with the requirements of PURA Chapter 39, Subchapter H, and applicable commission rules. The office satisfying this requirement for a REP shall have a physical address that is not a post office box and shall be a location where the above three functions can occur. To evaluate compliance with requirements in this paragraph, the commission's authorized representative may visit the office of a certificated REP at any time during normal business hours on the same basis available to an electric customer. An applicant shall submit the following information with an application:

(A) Evidence that it has made arrangements for an office located in Texas, including the physical address of the office; or

(B) An affidavit stating that the applicant will obtain an office located within Texas meeting the requirements of this paragraph, and will notify the commission of its physical address,

after certification but before providing retail electric service to customers in Texas.

(3) Threshold residential service requirement. For 36 months after retail competition begins, if a REP serves an aggregate load in excess of 300 megawatts within Texas during a given year, not less than 5.0% of the REP's load for the year in megawatt hours must consist of residential customers, pursuant to PURA §39.352(g).

(A) The 300 megawatt aggregate load threshold shall be calculated by the "4CP" method, which consists of the average of the highest aggregate coincident peak demand occurrences in each of the months of June, July, August, and September of the annual reporting period, in megawatts, of all the REP's customers served in Texas.

(B) If the 4CP calculation made under subparagraph (A) of this paragraph is in excess of 300 megawatts, the certificate holder shall:

(i) demonstrate that not less than 5.0% of the total quantity of megawatt hours it sold in the calendar year was supplied to residential customers, or

(ii) demonstrate that another REP served sufficient qualifying residential load on its behalf, or

(iii) make the necessary calculations and pay an amount into the system benefit fund equal to $1 multiplied by a number equal to the difference between the number of megawatt hours it sold to residential customers and the number of megawatt hours it was required to sell to such customers.

(C) The calculations in subparagraph (B) of this paragraph are subject to the following limitations:

(i) An affiliated REP shall pay $1 multiplied by a number equal to the difference between the number of megawatt hours sold to residential customers outside of the electric utility's service area and the number of megawatt hours it was required to sell to such customers outside of the electric utility's service area.

(ii) For purposes of subparagraph (B)(ii) of this paragraph, "qualifying residential load" may not include customers served by an affiliated retail electric provider in its affiliated electric utility's service area.

(iii) The requirements of this paragraph apply only to the portion of an affiliated REP's load that is outside the electric utility's service area. With respect to that "outside" load, any residential customers counted to meet the 5.0% threshold of residential customers must also be outside the electric utility's service area.

(iv) Where several REPs belong to a common owner, their loads will be combined for purposes of evaluation under this subsection. If the common owner is an electric utility, only loads served outside the electric utility's service area will be used in the calculations under this paragraph.

(f) Financial requirements. As a requisite for obtaining and maintaining certification, a REP must meet the financial resource standards established by this subsection. The standards established by paragraphs (1), (2), and (3) of this subsection are additive.

(1) Financial standards required for credit quality. A REP shall fulfill the following financial qualifications listed below concerning its underlying credit quality:

(A) Minimum credit standards for REP certification. In order to be certified by the commission, a REP or its parent corporation or controlling shareholder providing a guaranty of its REP under subparagraph (D) of this paragraph must demonstrate that it has:

(i) Assets in excess of liabilities, or equity, of at least $50,000,000 on its most recent balance sheet;

(ii) An investment grade credit rating as provided for under subparagraph (1)(F); or

(iii) Cash resources of at least $100,000.

(B) Utility credit standards for REPs. With the exception of the credit standards provided for in paragraph (3) of this subsection, a transmission and distribution utility shall not impose any additional or separate credit conditions on a REP, unless the REP has defaulted on one or more payments to the utility for services provided by the utility. A transmission and distribution utility may impose credit conditions on a REP that has defaulted to the extent specified in its tariff and allowed by commission rules.

(C) Financial evidence. A REP shall be permitted to use any of the financial instruments listed below, as well as any other financial instruments approved in advance by the commission, in order to satisfy the cash requirements established by this rule.

(i) Cash or cash equivalent, including cashier's check or sight draft;

(ii) A certificate of deposit with a bank or other financial institution;

(iii) A letter of credit issued by a bank or other financial institution, irrevocable for a period of at least 15 months;

(iv) A line of credit or other loan issued by a bank or other financial institution, including a bond, irrevocable for a period of at least 15 months;

(v) A loan issued by a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant, irrevocable for a period of at least 15 months;

(vi) A guaranty issued by a shareholder or principal of the applicant; a subsidiary or affiliate of the applicant or a corporation holding controlling interest in the applicant; irrevocable for period of at least 15 months.

(D) Loans or guarantees. To the extent that it relies upon a loan or guaranty described in subparagraph (C)(v) or (vi) of this paragraph, the REP shall provide financial evidence sufficient to demonstrate that the lender or guarantor possesses the cash or cash equivalents needed to fund the loan or guaranty.

(E) Unencumbered resources. All cash and other instruments listed in subparagraph (C) of this paragraph as evidence of financial resources shall be unencumbered by pledges for collateral. These financial resources shall be subject to verification and review prior to certification of the REP and at any time after certification in which the REP relies on the cash or other financial instrument to meet the requirements under this subsection. The resources available to the REP must be authenticated by independent, third party documentation.

(F) Credit ratings. To meet the requirements of this paragraph, a REP may rely upon either its own investment grade credit rating, or a bond, guaranty, or corporate commitment of an affiliate or another company, if the entity providing such security is also rated investment grade. The determination of such investment grade quality will be based on the ratings of either Standard & Poors (S&P) or Moody's Investor Services (Moody's). If the investment grade

credit rating of either S&P or Moody's is suspended or withdrawn, the REP must provide alternative financial evidence included under subparagraphs (C)-(E) of this paragraph within ten days of the credit downgrade.

(2) Financial standards required for customer protection. A REP shall maintain records on an on-going basis for any deposits or advance payments received from customers. Financial obligations to customers shall be payable to them within 30 calendar days from the date the REP notifies the commission that it intends to withdraw its certification or is deemed by the commission not able to meet its current customer obligations. Customer obligations shall be settled before the REP withdraws its certification or ceases doing business in Texas. A REP must meet the following financial qualifications concerning its receipt of customer payments:

(A) Financial obligations to customers. The REP must maintain and provide evidence of financial resources equal to the sum of its obligations to customers for any deposits or other advance payments received from customers, subject to the following conditions.

(i) Financial resources required under this paragraph shall be maintained at levels sufficient to demonstrate that the REP can cover all deposits or other advance payments that are outstanding at any given time.

(ii) The REP shall file with the commission a sworn affidavit demonstrating compliance with this paragraph within 90 days of receiving the first payment from customers for its services.

(iii) Financial resources required pursuant to this subsection shall not be reduced by the REP without the advance approval of the commission.

(B) Financial evidence. A REP shall be permitted to use any of the financial instruments and conditions set out in paragraph (1)(C)-(F) of this subsection to demonstrate that its resources are adequate for customer protection.

(C) External notice. Any party providing the financial resources necessary to protect customers under this provision of the rule, either directly or indirectly, shall be provided a copy of this rule by the REP.

(3) Financial standards required of REPs for the billing and collection of transition charges. If a REP serves customers in the service area of a transmission and distribution utility that is subject to a financing order pursuant to PURA §39.310, the REP shall comply with any additional standards specified in §25.108 of this title (relating to Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges).

(4) Credit support by affiliates. To the extent it relies on an affiliated transmission or distribution utility for credit, investment, or financing arrangements pursuant to this subsection, the REP shall demonstrate that any such arrangement complies with §25.272(d)(7) of this title.

(5) Reporting requirements. A REP certified under this subsection is subject to the ongoing annual financial requirements of subsection (f) of this section and any other applicable requirements of subsection (i) of this section.

(g) Technical and managerial resource requirements. As a requisite for providing retail electric service, a REP must have technical resources to provide continuous and reliable electric service to customers in its service area and technical and managerial ability to supply electric service at retail in accordance with its customer contracts. Technical and managerial resource requirements include:

(1) Capability to comply with all scheduling, operating, planning, reliability, customer registration and settlement policies, rules, guidelines, and procedures established by the ERCOT independent system operator (ISO), or other independent organization, if applicable, including any independent organization requirements for 24 hour coordination with control centers for scheduling changes, reserve implementation, curtailment orders, interruption plan implementation, and telephone number, fax number, and address where its staff can be directly reached at all times.

(2) Capability to comply with the registration and certification requirements of the ERCOT ISO or other independent organization and its system rules, or contracts for the purchase of power from entities registered with or certified by the ERCOT ISO or independent organization and capable of complying with its system rules.

(3) Purchase of capacity and reserves, or other ancillary services, as may be required by the ERCOT ISO or other independent organization to provide adequate electricity to all the applicant's customers in its certificated area.

(4) Compliance with all renewable energy portfolio standards in accordance with §25.173 of this title (relating to Goal for Renewable Energy).

(5) At least one principal or employee experienced in the retail electric industry or a related industry.

(6) Adequate staffing and employee training to meet all service level commitments.

(7) The capability and effective procedures to be the primary point of contact for retail electric customers for distribution system service, including procedures for response to outage notices on a 24-hour basis.

(8) A customer service plan that describes how the REP complies with the commission's customer protection and anti-discrimination rules.

(9) The following information submitted in an initial application:

(A) Prior experience of the applicant or one or more of the applicant's principals or employees in the retail electric industry or a related industry.

(B) A 12 month estimate of the expected total load and residential load to be supplied with electric service in Texas by the applicant.

(C) Any complaint history and compliance record during the three calendar years prior to the filing of the application regarding the applicant, applicant's affiliates that provide utility related services such as telecommunications, electric, gas, water, or cable service, the applicant's predecessors in interest, and principals with public utility commissions, attorney general offices, or other applicable regulatory agencies in other states where the applicant is doing business or has conducted business in the past or with the Texas Secretary of State, Texas Comptroller's Office, or Office of the Texas Attorney General. Relevant information shall include, but is not limited to, the type of complaint, status of complaint, resolution of complaint and the number of customers in each state where complaints occurred. The Office of Customer Protection shall review any similar complaint information on file at the commission.

(D) A summary of any history of bankruptcy, dissolution, merger or acquisition of the applicant or any predecessors in interest in the three calendar years immediately preceding the application; and

(E) A statement indicating whether the applicant is currently under investigation, or has been penalized, by an attorney general or any state or federal regulatory agency, either in this state or in another state or jurisdiction for violation of any deceptive trade or consumer protection laws or regulations.

(F) Disclosure of whether the applicant, a predecessor, an officer, director or principal has been convicted or found liable for fraud, theft or larceny, deceit, or violations of any customer protection or deceptive trade laws in any state;

(G) An affidavit stating that the applicant will register with or be certified by the ERCOT ISO or other independent organization and will comply with all system rules and standards established by the ERCOT ISO or other independent organization; or that all entities with whom the applicant has a contractual relationship to purchase power are registered with or certified by the independent organization and will comply with all system rules and standards established by the independent organization; and

(H) Other evidence, at the discretion of the applicant, supporting the applicant's plans for meeting requirements listed in paragraphs (1) - (5) of this subsection.

(h) Customer Protection requirements. As a requisite for obtaining and maintaining certification, a REP shall comply with any customer protection requirements, disclosure requirements, marketing guidelines and anti-discrimination rules adopted by the commission pursuant to PURA §§17.001 - 17.004 and Chapter 39. In the absence of further specificity in other commission rules, certificated REPS shall be held to the general standards listed below. An applicant for certification as a REP shall provide a sworn affidavit, as specified in the application form approved by the commission, that it will comply with this section and any other applicable customer protection rules, disclosure requirements, marketing guidelines, and anti-discrimination rules approved by the commission.

(1) A REP may not refuse to provide retail electric service or otherwise discriminate in the provision of electric service to any customer because of race, creed, color, national origin, ancestry, sex, marital status, lawful source of income, disability, or familial status; or refuse to provide retail electric service to a customer because the customer is located in an economically distressed geographic area or qualifies for low-income affordability or energy efficiency services.

(2) A REP shall disclose to its customers whom to contact and what to do in the event of power outage or other electricity-related emergency.

(3) A REP shall inform its customers of illegal practices and of the customer's rights and avenues available to pursue a complaint against the REP.

(4) A REP shall not switch, or cause to be switched, the retail electric provider for a customer without first obtaining the customer's permission.

(5) A REP shall not bill, or cause to be billed, an unauthorized charge to a customer's retail electric service bill.

(6) A REP shall respond in good faith when notified by a customer of a complaint.

(7) A REP shall maintain a customer service staff adequate to handle its customers' inquiries and complaints.

(8) A REP may not release proprietary customer information to any person unless the customer authorizes the release in a manner approved by the commission.

(i) Requirements for reporting and for changing the terms of a REP certificate. The ongoing maintenance of a REP certificate is dependent upon keeping the certification information up to date, pursuant to the following requirements:

(1) The certificate holder shall notify the commission within 30 days of any change in its office address, business address, telephone number(s), or other contact information.

(2) A certificate holder that has met the Texas office requirement by affidavit, pursuant to subsection (e)(2)(B) of this section, shall supply the commission with the physical office address on or before the date of commencing retail electric service in Texas.

(3) The holder of a REP certificate shall notify the commission within 30 days and must be prepared if, necessary, for re-certification by the commission if any of the following events occur:

(A) a material change in any of the technical conditions presented pursuant to subsection (g) of this section as the basis for the approval of the applicant's initial certification; or,

(B) a material change in any of the financial requirements presented pursuant to subsection (f) of this section as the basis for approval of the applicant's initial certification;

(4) All REP certificate holders shall file updated information set forth in this subsection on an annual basis on a report form approved by the commission. The annual report is due on June 1 each year for the preceding calendar year. The following information, at a minimum, shall be reported annually:

(A) Any changes in addresses, telephone numbers, authorized contacts, and other information necessary for contacting the certificate holder.

(B) If certificated for a service area defined by geography, identification of areas where REP is providing retail electric service to customers in Texas compiled by zip code.

(C) For 36 months after retail competition begins, the result of the 4CP calculation and proof of threshold residential service requirements, if applicable, pursuant to subsection (e)(3) of this section.

(D) A list of aggregators with whom the REPs has conducted business in the reporting period, including commission registration verification for each.

(E) A sworn affidavit that the certificate holder is not in material violation of any of the requirements of its certificate.

(5) The holder of a REP certificate shall file with the commission notice of changes to the organizational structure or to the material facts represented in its application, including, but not limited to any change in name, service area, facilities ownership or affiliation upon which the commission relied in approving the REP's application. The commission may require the REP to file an amendment to its certificate if it determines that the changes warrant a reevaluation of the REP's basis for certification.

(6) The holder of a REP certificate for a service area defined by specific customers may amend its certificate to add additional specified customers by submitting to the commission the affidavit required by subsection (d)(2) of this section from the additional customers on or before the commencement of electric service to the those customers.

(7) A REP certificate shall not be transferred without prior commission approval. Approval for transfer shall be obtained by petition to the commission. The transferee must complete and file with the commission an application form for certification that demonstrates the transferee's financial and technical fitness to render service under the transferred certificate.

(8) No REP certificate holder shall cease operations as a REP without prior notice to the commission, to each of the REP's customers to whom the REP is providing service on the proposed date of cessation of business operations, and other affected persons, including the independent operator, transmission and distribution utilities, electric distribution cooperatives, municipally owned utilities, generation suppliers, and providers of last resort. The REP shall file with the commission proof of refund of any monies owed to customers. Upon the effective cessation date, a REP's certificate will be deemed suspended. If, within 24-months of cessation, a REP demonstrates compliance with certification requirements, the certificate will be reinstated.

(9) If a REP files a petition in bankruptcy, is the subject of an involuntary bankruptcy proceeding, or in any other manner becomes insolvent, it shall notify the commission within ten days of this event and shall provide the commission a brief summary of the nature of the proceedings. The commission shall have the right to proceed against any financial resources that the REP relied on in obtaining its certificate, to satisfy unpaid administrative penalties or payments owed to customers.

(j) Suspension and revocation. Pursuant to PURA §39.356, certificates granted pursuant to this section are subject to suspension and revocation for significant violations of PURA, commission rules, or reliability standards adopted by an independent organization. The commission may also amend the certificate or impose an administrative penalty for a significant violation. The commission or any affected person may bring a complaint seeking to suspend or revoke a REP's certificate. Significant violations include, but are not limited to, the following:

(1) Providing false or misleading information to the commission;

(2) Engaging in fraudulent, unfair, misleading, deceptive, or anti-competitive business practices or unlawful discrimination;

(3) Switching, or causing to be switched, the retail electric provider for a customer without first obtaining the customer's permission;

(4) Billing an unauthorized charge, or causing an unauthorized charge to be billed to a customer's retail electric service bill;

(5) Failure to maintain continuous and reliable electric service to its customers pursuant to this section;

(6) Failure to maintain the minimum financial resources as set out in subsection (f) of this section;

(7) Bankruptcy, insolvency, or inability to meet financial obligations on a timely basis;

(8) Failure to observe any scheduling, operating, planning, reliability, and settlement policies, rules, guidelines, and procedures established by the independent organization;

(9) A pattern of not responding to commission inquiries or customer complaints in a timely fashion;

(10) Suspension or revocation of a registration, certification, or license by any state or federal authority;

(11) Conviction of a felony by the certificate holder or principal employed by the certificate holder, of any crime involving fraud, theft or deceit related to the certificate holder's service;

(12) Not providing retail electric service to customers within 24 months of the certificate being granted by the commission;

(13) Failure to serve as a provider of last resort if required to do so by the commission pursuant to PURA §39.106(f); and

(14) Failure, or a pattern of failures to meet the conditions of this section or other commission rules or orders.

§25.108. Financial Standards for Retail Electric Providers Regarding the Billing and Collection of Transition Charges.

(a) Application. This section applies to any retail electric provider (REP) serving customers in a transmission and distribution (T&D) utility service area subject to a financing order issued by the commission under Public Utility Regulatory Act (PURA) §39.303.

(b) Applicability of REP standards. Beginning on the date of customer choice for any retail customers, the servicer of the transition bonds will bill the transition charges for those customers to each retail customer's REP and the REP will collect transition charges from its retail customers. The standards in this section are the most stringent that can be imposed on REPs by any servicer of transition bonds without the prior approval of the commission. The standards relate only to the billing and collection of transition charges authorized by a financing order and do not apply to the collection of any other non-bypassable charges, or any other charges. The standards apply to all REPs other than REPs that have contracted with the transmission and distribution company to bill and collect transition charges from retail customers. REPs may contract with parties other than the transmission and distribution company to bill and collect transition charges from retail customers, but such REPs shall remain subject to the standards in this section. Modifications to the REP standards in this section may not be implemented absent prior written confirmation from each of the rating agencies that have rated the transition bonds that such modifications will not cause a suspension, withdrawal, or downgrade of the ratings on the transition bonds.

(c) REP standards. The REP standards for transition charges are:

(1) Rating, deposit, and related requirements. A REP that does not have or maintain the requisite long-term, unsecured credit rating may select which alternate form of deposit, credit support, or combination thereof it will utilize, in its sole discretion. The indenture trustee shall be the beneficiary of any affiliate guarantee, surety bond or letter of credit. The provider of any affiliate guarantee, surety bond, or letter of credit must have and maintain a long-term, unsecured credit ratings of not less than "BBB-" and "Baa3" (or the equivalent) from Standard & Poor's ("S&P") and Moody's Investors Service ("Moody's"), respectively. Each REP must:

(A) have a long-term, unsecured credit rating of not less than "BBB-" and "Baa3" (or the equivalent) from S&P and Moody's , respectively; or

(B) provide:

(i) a deposit of two months' maximum expected transition charge collections in the form of cash,

(ii) an affiliate guarantee, surety bond, or letter of credit providing for payment of such amount of transition-charge collections in the event that the REP defaults in its payment obligations, or

(iii) a combination of clause (i) and (ii) of this subparagraph.

(2) Loss of credit rating. If the long-term, unsecured credit rating from either S&P or Moody's of a REP that did not previously provide the alternate form of deposit, credit support, or combination thereof or of any provider of an affiliate guarantee, surety bond, or letter of credit is suspended, withdrawn, or downgraded below "BBB-" or "Baa3" (or the equivalent), the REP must provide the alternate form of deposit, credit support, or combination thereof, or new forms thereof, in each case from providers with the requisite ratings, within ten business days following such suspension, withdrawal, or downgrade. A REP failing to make such provision must comply with the provisions set forth in paragraph (5) of this subsection.

(3) Computation of deposit. The computation of the size of a required deposit shall be agreed upon by the servicer and the REP, and reviewed no more frequently than quarterly to ensure that the deposit accurately reflects two months' maximum collections. Within ten business days following such review, the REP shall remit to the indenture trustee the amount of any shortfall in such required deposit, or the servicer shall instruct the indenture trustee to remit to the REP any amount in excess of such required deposit. A REP failing to so remit any such shortfall must comply with the provisions set forth in paragraph (5) of this subsection. REP cash deposits shall be held by the indenture trustee, maintained in a segregated ccount, and invested in short-term high quality investments, as permitted by the rating agencies rating the transition bonds. Investment earnings on REP cash deposits shall be considered part of such cash deposits so long as they remain on deposit with the indenture trustee. At the instruction of the servicer, cash deposits will be remitted with investment earnings to the REP at the end of the term of the transition bonds unless otherwise utilized for the payment of the REP's obligations for transition bond payments. Once the deposit is no longer required, the servicer shall promptly (but not later than 30 calendar days) instruct the indenture trustee to remit the amounts in the segregated accounts to the REP.

(4) Payment of transition charges. Payments of transition charges are due 35 calendar days following each billing by the servicer to the REP, without regard to whether or when the REP receives payment from its retail customers. The servicer shall accept payment by electronic funds transfer, wire transfer, and/or check. Payment will be considered received the date the electronic funds transfer or wire transfer is received by the servicer, or the date the check clears. A 5.0% penalty is to be charged on amounts received after 35 calendar days; however, a ten calendar-day grace period will be allowed before the REP is considered to be in default. A REP in default must comply with the provisions set forth in paragraph (5) of this subsection. The 5.0% penalty will be a one-time assessment measured against the current amount overdue from the REP to the servicer. The "current amount" consists of the total unpaid transition charges existing on the 36th calendar day after billing by the servicer. Any and all such penalty payments will be made to the indenture trustee to be applied against transition charge obligations. A REP shall not be obligated to pay the overdue transition charges of another REP. If a REP agrees to assume the responsibility for the payment of overdue transition charges as a condition of receiving the customers of another REP that has decided to terminate service to those customers for any reason, the new REP shall not be assessed the 5.0% penalty upon such transition charges; however, the prior REP shall not be relieved of the previously-assessed penalties.

(5) Remedies upon default. After the ten calendar-day grace period (the 45th calendar day after the billing date) referred to in paragraph (4) of this subsection, the servicer shall have the option to seek recourse against any cash deposit, affiliate guarantee, surety bond, letter of credit, or combination thereof provided by the REP, and to avail itself of such legal remedies as may be appropriate to collect any remaining unpaid transition charges and associated penalties due the servicer after the application of the REP's deposit or alternate form of credit support. In addition, a REP that is in default with respect to the requirements set forth in paragraphs (2), (3), or (4) of this subsection shall select and implement one of the options listed in subparagraphs (A), (B), or (C) of this paragraph. If a REP that is in default fails to immediately select and implement one of these options or, after so selecting one of the options, fails to adequately meet its responsibilities thereunder, then the servicer shall immediately implement the option in subparagraph (A) of this paragraph. Upon re-establishment of compliance with the requirements set forth in paragraphs (2), (3), or (4) of this subsection, and the payment of all past-due amounts and associated penalties, the REP will no longer be required to comply with this paragraph.

(A) Allow the Provider of Last Resort ("POLR") or a qualified REP of the customer's choosing to immediately assume the responsibility for the billing and collection of transition charges.

(B) Immediately implement other mutually suitable and agreeable arrangements with the servicer. It is expressly understood that the servicer's ability to agree to any other arrangements will be limited by the terms of the securitization Servicing Agreement and requirements of each of the rating agencies that have rated the transition bonds necessary to avoid a suspension, withdrawal, or downgrade of the ratings on the transition bonds.

(C) Arrange that all amounts owed by retail customers for services rendered be timely billed and immediately paid directly into a lock-box controlled by the servicer with such amounts to be applied first to pay transition charges before the remaining amounts are released to the REP. All costs associated with this mechanism will be borne solely by the REP.

(6) Billing by providers of last resort. The initial POLR appointed by the commission, or any commission-appointed successor to the POLR, must meet the minimum credit rating or deposit/credit support requirements described in paragraph (1) of this subsection in addition to any other standards that may be adopted by the commission. If the POLR defaults or is not eligible to provide such services, responsibility for billing and collection of transition charges will immediately be transferred to and assumed by the servicer until a new POLR can be named by the commission or the customer requests the services of a certified REP. Retail customers may never be re-billed by the successor REP, the POLR, or the servicer for any amount of transition charges they have paid their REP (although future transition charges shall reflect REP and other system-wide charge-offs). Additionally, if the amount of the penalty detailed in paragraph (5) of this subsection is the sole remaining past-due amount after the 45th calendar day, the REP shall not be required to comply with paragraph (5)(A), (B) or (C) of this subsection, unless the penalty is not paid within an additional 30 calendar days.

(7) Dispute resolution. In the event that a REP disputes any amount of billed transition charges, the REP shall pay the disputed amount under protest according to the timelines detailed in paragraph (4) of this subsection. The REP and servicer shall first attempt to informally resolve the dispute, but if they fail to do so within 30 calendar days, either party may file a complaint with the commission. If the REP is successful in the dispute process (informal or formal), the REP shall be entitled to interest on the disputed amount paid to the servicer at the commission-approved interest rate. Disputes about the date of receipt of transition charge payments (and penalties arising thereof) or the size of a required REP deposit will be

handled in a like manner. It is expressly intended that any interest paid by the servicer on disputed amounts shall not be recovered through transition charges if it is determined that the servicer's claim to the funds is clearly unfounded. No interest shall be paid by the servicer if it is determined that the servicer has received inaccurate metering data from another entity providing competitive metering services pursuant to PURA §39.107.

(8) Metering data. If the servicer is providing the metering, metering data will be provided to the REP at the same time as the billing. If the servicer is not providing the metering, the entity providing metering services will be responsible for complying with commission rules and ensuring that the servicer and the REP receive timely and accurate metering data in order for the servicer to meet its obligations under the securitization servicing agreement and the applicable financing order with respect to billing and true-ups.

(9) Charge-off allowances. The REP will be allowed to hold back an allowance for charge-offs in its payments to the servicer. Such charge-off rate will be recalculated each year in connection with the annual true-up procedure. In the initial year, REPs will be allowed to remit payments based on the same system-wide charge-off percentage then being used by the servicer to remit payments to the indenture trustee for the holders of transition bonds. On an annual basis in connection with the true-up process, the REP and the servicer will be responsible for reconciling the amounts held back with amounts actually written off as uncollectible in accordance with the terms agreed to by the REP and the servicer, provided that:

(A) The REP's right to reconciliation for write-offs will be limited to customers whose service has been permanently terminated and whose entire accounts (*i.e.,* all amounts due the REP for its own account as well as the portion representing transition charges) have been written off.

(B) The REP's recourse will be limited to a credit against future transition charge payments unless the REP and the servicer agree to alternative arrangements, but in no event will the REP have recourse to the indenture trustee, the Special Purpose Entity ("SPE") established at the time of securitization, or the SPE's funds for such payments.

(C) The REP shall provide information on a timely basis to the servicer so that the servicer can include the REP's default experience and any subsequent credits into its calculation of the adjusted transition charge rates for the next transition charge billing period and the REP's rights to credits will not take effect until after such adjusted transition charge rates have been implemented.

(10) Service termination. In the event that the servicer is billing customers for transition charges, the servicer shall have the right to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules. In the event that a REP or the POLR is billing customers for transition charges, the REP shall have the right to transfer the customer to the POLR (or to another certified REP) or to direct the servicer to terminate transmission and distribution service to the end-use customer for non-payment by the end-use customer pursuant to applicable commission rules.

(11) Precedence and modifications of REP standards in a financing order.

(A) Compliance with financing order standards. If the REP standards in the applicable financing order are different than the standards in this section, then the REP must comply with the REP standards stated in the financing order, instead of the standards stated in this section, unless the standards of the financing order have been modified and approved according to subparagraph (B) of this paragraph.

(B) Commission modification of standards. The commission may impose standards on REPs that are different from those in the applicable financing order but only if the commission receives prior written confirmation from each rating agency that rated the transition bonds authorized by that financing order that the proposed modifications will not cause a suspension, withdrawal, or downgrade of ratings on the transition bonds.

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

Filed with the Office of the Secretary of State, on April 14, 2000.

TRD-200002657
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-7308

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Chapter 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

Subchapter E. CERTIFICATION, LICENSING AND REGISTRATION

16 TAC §26.107

The Public Utility Commission of Texas (commission) proposes an amendment to §26.107, relating to Registration of Nondominant Telecommunications Carriers.

The proposed amendment will implement the provisions of the Public Utility Regulatory Act (PURA) §§17.051 - 17.053 and §§64.051 - 64.053 (Vernon Supplement 2000), which direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers, allow the commission to require registration as a condition of doing business in the state of Texas, establish customer service and protection rules, suspend or revoke certificates or registrations for repeated violations of PURA or commission rules, and require telecommunications service providers to submit reports concerning any matter over which the commission has authority. Project Number 21456, *Amendments to Substantive Rules §§26.107, 26.109, 26.111 and new 26.114 Regarding Certification, Registration, and Reporting Requirements in Relation to SB 560 and Miscellaneous Revisions*, was assigned to this proceeding on September 29, 1999. The timeline for this proposed rulemaking, amendment to substantive rule §26.107, coincides with the revised timeline for the entire rulemaking project. Copies of the proposed amendment and proposed new annual reporting form entitled *Reporting Requirements for Interexchange Carriers, Prepaid Calling Services Companies, and other Nondominant Telecommunications Carriers* may be obtained in the commission's Central Records and on the commission's web page at http://www/puc.state.tx.us/telecomm/projects/21016/21456.cfm.

Tamarian Stevens, Network Analyst, Telecommunications Industry Analysis, Office of Regulatory Affairs, and Denise E.

Taylor, Senior Enforcement Investigator, Office of Customer Protection, have 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. Stevens and Ms. Taylor have 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 the section will be greater protection of the public interest, a more uniform process of certifying and registering telecommunications utilities in the state of Texas, a reduction in the number of public complaints against telecommunications utilities concerning the provision of service and quality of service, and an increase in compliance by telecommunications utilities with the certification, registration, and reporting requirements of PURA. There will be no effect on small businesses or micro-businesses as a result of enforcing this section. There is an anticipated economic cost to persons who are required to comply with this section as proposed which cannot be quantified at this time.

Ms. Stevens and Ms. Taylor have also determined that for each year of the first five years the proposed section is in effect there should be no affect 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 under Texas Government Code §2001.029 at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701, on Wednesday, May 31, 2000, at 9:00 a.m. in Hearing Room Gee.

Comments on the proposed amendment and the proposed new annual reporting form may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, within 30 days after publication. 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 21456.

This amendment is proposed under Senate Bill 86, Act of May 26, 1999, 76th Legislative Session, chapter 1579, §3, 1999, Texas Session Law Service, 5424 (Vernon) (codified as an amendment to the Public Utility Regulatory Act (PURA) §§17.051 - 17.053), Senate Bill 560, Act of May 26, 1999, 76th Legislative Session, chapter 1212, §55, 1999 Texas Session Law Service, 4237 (Vernon) (codified as amendments to PURA §§64.051 - 64.053), and PURA §§14.002, 15.023, 17.004, 17.051, 17.052, 17.053, 64.051, 64.052, and 64.053. Section 14.002 provides the commission with the authority to make and enforce rules reasonably required in the exercise of its power and jurisdiction. Section 15.023 grants the commission authority to impose an administrative penalty against an entity for violation of a rule adopted under PURA. Section 17.004 grants the commission authority to adopt and enforce rules as necessary or appropriate to establish customer protection standards. Section 17.051 and §64.051 direct the commission to adopt registration requirements for all telecommunications utilities that are not dominant carriers. Section 17.052 and §64.052 allow the commission to require registration as a condition of doing business in Texas, establish customer service and protection rules, and suspend or revoke certificates or registrations for repeated violations of this chapter or commission rules. Section 17.053 and §64.053 allow the commission to require a telecommunications service provider to submit reports to the commission concerning any matter over which it has authority under this chapter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 15.023, 17.004, 17.051, 17.052, 17.053, 54.008, 64.051, 64.052, and 64.053.

§26.107. Registration of Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers.

(a) Application. This section applies to the registration of persons and entities who provide intralata and interlata long distance telecommunications services, prepaid calling services companies pursuant to §26.34 of this title (relating to Telephone Prepaid Calling Services), pay telephone service providers pursuant to §26.102 of this title (relating to Registration of Pay Telephone Service Providers), and other telecommunications services that do not require certification as established in the Public Utility Regulatory Act, Chapter 54, Subchapter C.

(b) Purpose. Through this section, the commission strives to identify, monitor, and protect the public interest against telecommunications entities providing uncertificated telecommunications services. The commission's overall goal is to encourage the development of a competitive marketplace for nondominant telecommunications services, free of unreasonable barriers to entry, that will provide consumers with the best services at the lowest cost.

(c) [~~(a)~~] Each nondominant carrier not holding a certificate of operating authority (COA) or service provider certificate of operating authority (SPCOA) [~~and not currently registered with the commission~~] shall file with the commission the information set forth in paragraphs (1)-(10) [~~(1)-(7)~~] of this subsection within 30 days of commencing service in Texas. Each registered [~~uncertificated~~] nondominant carrier shall keep this information updated and current at all times. [~~Each certificated nondominant carrier also shall keep updated and current the similar information included in its application for a certificate:~~]

(1) Legal name and all assumed names under which the registrant conducts business. [~~, if any;~~] A registrant shall use only one name in which to provide telecommunications services to the public per registration;

(2) Address [~~and telephone number~~] of the principal office and business office;

(3) Principal office and business office telephone number, fax number, website address, E-mail address, and toll-free customer service telephone number. (If the registrant has not obtained a toll-free customer service telephone number at the time of the registration, the registrant must commit to obtaining one before commencing business);

(4) [~~(3)~~] Date service commences/commenced in Texas;

[~~(4) Name, address, and office location of each partner (if applicable) or each officer;~~]

(5) Form of business (*e.g.*, corporation, partnership, sole proprietorship), state in which business was formed, certification/authorization number, and date business was formed; [~~Names and addresses of five largest shareholders (if applicable);~~]

(6) Legal name of all affiliated companies that are public utilities or that are providing telecommunications services and the states in which they are providing service. Give a description of all

affiliates and explain in detail the relationship between the registrant and its affiliates. An organizational chart should be provided; [~~Name, address, and telephone number of registered agent or designated person who can be contacted by the commission; and~~]

(7) FCC Carrier Identification Code (CIC) or National Exchange Carriers Association (NECA) Operating Carrier Numbers (OCNs), if available; [~~Name, address, and telephone number of attorney, if any;~~]

(8) Name, addresses, phone numbers, and e-mail/website address, and office location of each director, officer, or partner (if applicable);

(9) Names, addresses, phone numbers, and e-mail/website address of the five largest shareholders (if applicable); and

(10) Name, address, telephone number, and e-mail/website address of authorized/registered agent who can be contacted by the commission.

(d) [~~(b)~~] By June 30 of each year, each nondominant carrier [~~that during the previous 12 months has not filed changes to the information required pursuant to subsection (a) of this section~~] shall file with the commission an updated registration form [~~a letter informing the commission that no changes have occurred~~]. An uncertificated nondominant carrier failing to file an updated registration form by [~~either the letter or the updates required by subsection (a) of this section during the 12-month period ending~~] June 30 may no longer be considered to be registered with the commission.

(e) [~~(c)~~] All nondominant carriers shall comply with the reporting requirements in §26.89 of this title (relating to Information Regarding Rates and Services of Nondominant Carriers).

(f) Compliance enforcement.

(1) Administrative penalties. If the commission finds that a registrant has violated any provision of this section, the commission shall order the registrant to take corrective action, as necessary, and the registrant may be subject to administrative penalties and other enforcement actions pursuant to PURA, Chapter 15.

(2) Revocation or suspension. If the commission finds that a registrant is repeatedly in violation of PURA or commission rules, the commission may suspend or revoke a registration pursuant to PURA Chapter 17.

(3) Enforcement. The commission shall coordinate its enforcement efforts of fraudulent, misleading, deceptive, and anticompetitive business practices with the Office of the Attorney General in order to ensure consistent treatment of specific alleged violations.

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

Filed with the Office of the Secretary of State, on April 13, 2000.

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Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-7308

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Subchapter F. REGULATION OF TELECOMMUNICATIONS SERVICE

16 TAC §26.129

The Public Utility Commission of Texas (commission) proposes new §26.129 relating to Standards for Access to Provide Telecommunications Services at Tenant Request. The purpose of this proposed rule is to implement the Public Utility Regulatory Act, Texas Utilities Code Annotated §§54.259, 54.260, and 54.261 (Vernon 1998 & Supplement 2000) (PURA), regarding the non-discriminatory treatment of telecommunications utilities by property owners. Project Number 21400 has been assigned to this proceeding.

The proposed rule sets forth procedures whereby a requesting telecommunications carrier may seek access to the lease owner's property to install telecommunications equipment upon a tenant's request. The rule encourages independent negotiations between the telecommunications carrier and the property owner, and establishes procedures for resolution by the commission in the event an agreement cannot be reached. Further, the proposed rule addresses situations in which the property owner may deny access to the building for safety concerns or space constraints.

In 1995, the Legislature enacted PURA §§54.259, 54.260, and 54.261 as part of a comprehensive package of legislation to open Texas' telecommunications market to competition. The thrust of these particular PURA sections is to promote competition in the telecommunications market by allowing a tenant under a real estate lease to choose the provider of its telecommunications services. As the competitive marketplace has developed, the need for specific rules to implement these sections has become evident. Accordingly, the commission initiated this rulemaking proceeding to ensure the access of a telecommunications utility to the owner's property to serve a tenant as requested, thereby promoting tenant choice.

As part of the drafting process, commission staff conducted workshops in Austin, Houston, and Dallas to receive input from potentially affected persons. Further, staff participated in building tours to promote an understanding of the technical aspects of and potential space constraints due to the installation of telecommunications equipment.

The commission has prepared a takings impact assessment pursuant to Texas Government Code Annotated §2007.043. Interested persons may obtain a copy of this assessment by contacting the commission's Central Records department and referencing Project Number 21400. In summary, the commission finds that adherence to PURA §54.259 and proposed §26.129 may result in takings of real property. The purpose of the statute and proposed rule is to promote competition in the telecommunications market by effectuating a tenant's choice of telecommunications services provider. This purpose is advanced by ensuring the reasonable access of the telecommunications services provider to the owner's property to provide service to a tenant that has chosen such company as its telecommunications provider. Although PURA §54.259 and the proposed rule impose a burden on private real property, any taking that might result will be compensated. PURA §54.260 and the proposed rule require a telecommunications services provider to pay reasonable compensation to the affected property owner for the use of such space on the property.

The commission finds that the citizens of Texas will benefit from the proposed rule because it will foster competition in the tenant sector of the telecommunications services market. The language of PURA specifically sets forth the interrelationship between the property owner and the telecommunications services provider chosen by the tenant and authorizes the provider's access to the property as the means for accomplishing a tenant's choice in a telecommunications services provider. PURA further grants the commission plenary jurisdiction to enforce the statute's requirements. See PURA §54.259(c) and §54.260(b).

Evan Farrington, Attorney, Office of Policy Development, has determined that for the first five-year period the proposed rule is in effect there are no foreseeable implications relating to cost or revenues of the state or local governments as a result of enforcing or administering the section.

Mr. Farrington has also determined that for each year of the first five years the proposed rule is in effect the public benefits expected as a result of enforcing the rule will be that customers will have increased choice of telecommunications providers. Furthermore, there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the proposed section. There may be economic costs to persons who are required to comply with the proposed section. These costs are likely to vary from business to business, and are difficult to ascertain. However, the benefits accruing from implementation of the proposed section will outweigh these costs.

Moreover, Mr. Farrington has determined that the proposed rule will not affect a local economy for each year of the first five years it is in effect. Therefore, a local employment impact statement is not required under Administrative Procedure Act, Texas Government Code Annotated §2001.022.

The commission seeks comments on the proposed rule from interested persons. Comments should be organized in a manner consistent with the organization of the proposed rule. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed rule. The commission will consider the costs and benefits in deciding whether to adopt the proposed rule. Additionally, the commission invites specific comments from interested persons on the proposal of using six months as the measure of time remaining on a lease for purposes of defining the term "tenant" in the definitions section of the proposed rule. The commission also seeks comment regarding any applicable Texas Supreme Court case law that delineates the standards necessary to determine whether compensation is adequate pursuant to the requirement in PURA §54.260(a)(6). The commission invites comment on whether the proposed rule provides property owners with adequate measures to address the security, safety, liability and other concerns specified in PURA §54.260(a)(1)-(5). Lastly, the commission seeks comment on whether it should adopt a section that allows parties to opt into alternative dispute resolution. If so, what procedures should the commission adopt for referral to mediation or arbitration?

Comments on the proposed rule (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, within 30 days after publication. Reply comments may be submitted within 45 days after publication. All comments should refer to Project Number 21400.

The commission staff will conduct a public hearing on this rulemaking pursuant to Texas Government Code §2001.029 on Tuesday, June 13, 2000 at 9:30 a.m. in the Commissioners' Hearing Room at the commission's offices, 1701 North Congress Avenue, Austin, Texas, 7th floor.

This new section is proposed pursuant to the Public Utility Regulatory Act (PURA), Texas Utilities Code Annotated (Vernon 1998 & Supplement 2000) §14.002, which provides the commission with authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction. The commission also proposes this rule pursuant to PURA §54.259, which provides it with authority to enforce the prohibition on discrimination by property owners; PURA §54.260, which provides it with authority to enforce conditions imposed by property owners; and PURA §54.261 regarding shared tenant services contracts.

Cross Reference to Statutes: PURA §§14.002, 54.259, 54.260, and 54.261.

§26.129. Standards for Access to Provide Telecommunications Services at Tenant Request.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §§54.259, 54.260, and 54.261 regarding the non-discriminatory treatment of a telecommunications utility by the property owner upon a tenant's request for telecommunications services.

(b) Application.

(1) This section applies to the following entities:

(A) "Telecommunications utilities" or "telecommunications utility" as defined in PURA §51.002(11) that hold a consent, franchise, or permit as determined to be the appropriate grants of authority by the municipality and hold a certificate if required by the Public Utility Regulatory Act ;

(B) Public or private property owners of commercial property and the property owner's authorized representative(s); and

(C) Public or private property owners of commercially operated residential property with four or more dwelling units and the property owner's authorized representative(s).

(2) This section does not apply to institutions of higher education as set forth by PURA §54.259(b).

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

(1) Conduit - A pipe installed on the property, in a building between floors, attached to walls, between buildings, located in the ceiling or floor space of a building, located on a customer's premise, or from a public right of way into a building or buildings for the purposes of containing and protecting cable.

(2) Existing carrier - A telecommunications utility that has installed telecommunications equipment on the property and is providing telecommunications services to a tenant on the property through the use of its own installed telecommunications equipment at the time the requesting carrier seeks access to the property.

(3) Property - A building or buildings that are under common ownership and which are located on a single piece of land, or a campus, or a parcel of land.

(4) Property owner - The owner of the property or its authorized representative(s).

(5) Requesting carrier - A telecommunications utility, that is not the existing carrier, seeking access to space in or on one or more buildings on the property for the purpose of providing telecommunications services to one or more tenants who have requested such services.

(6) Space - Area of the property for which access is being requested by the requesting carrier, which will be used to install the telecommunications equipment needed to provide telecommunications services to a requesting tenant on the property. Space includes conduit and may be located in or on the rooftop of a building or buildings on the property.

(7) Telecommunications equipment - The equipment installed or used by the existing carrier or the requesting carrier to provide telecommunications services to a tenant who has requested telecommunications services from the existing carrier or the requesting carrier.

(8) Tenant - Any occupant of a building or buildings on the property under the terms of a lease with the property owner which has a remaining term of more than six months and who is not subject to filed bona fide eviction proceedings under such lease with the property owner, or an authorized subtenant of such occupant whose occupancy is subject to the terms of the primary lease which has a remaining term of more than six months.

(d) Rights of parties.

(1) Tenant's right to choose requesting carrier. A tenant is entitled to choose the provider of its telecommunications services.

(2) Property owner's rights to manage access. The requirements of this subsection are not intended to eliminate or restrict the property owner's rights to manage access to public or private property pursuant to PURA §§54.259, 54.260, and 54.261.

(A) A property owner may:

(i) impose a condition on the requesting carrier that is reasonably necessary to protect:

(I) the safety, security, appearance, and condition of the property; and

(II) the safety and convenience of other persons;

(ii) impose a reasonable limitation on the time at which the requesting carrier may have access to the property to install telecommunications equipment;

(iii) impose a reasonable limitation on the number of such requesting carriers that have access to the property, if the property owner can demonstrate a space constraint that requires the limitation;

(iv) require a requesting carrier to agree to indemnify the property owner for damage caused installing, operating, or removing telecommunications equipment;

(v) require a tenant or requesting carrier to bear the entire cost of installing, operating, or removing telecommunications equipment; and

(vi) require requesting carrier to pay compensation that is reasonable and nondiscriminatory among such telecommunications utilities.

(B) A property owner may not:

(i) prevent the requesting carrier from installing telecommunications equipment on the property upon a tenant request;

(ii) interfere with the requesting carrier's installation of telecommunications equipment on the property upon a tenant request;

(iii) discriminate against such requesting carrier regarding installation, terms, or compensation of telecommunications equipment to a tenant on the property;

(iv) demand or accept an unreasonable payment of any kind from a tenant or the requesting carrier for allowing the requesting carrier on or in the property; or

(v) discriminate in favor of or against a tenant in any manner, including rental charge discrimination, based on the identity of a telecommunications utility from which a tenant receives telecommunications services.

(3) Requesting carrier's right to access.

(A) Upon a tenant request, the requesting carrier has the right to install telecommunications equipment on the property:

(i) for a period no longer than the remaining term of the requesting tenant's lease unless otherwise agreed to by the requesting carrier and the property owner;

(ii) without interference from the property owner, except as provided in this subsection; and

(iii) at terms, conditions, and compensation rates which are non-discriminatory.

(B) The requesting carrier shall comply with all applicable federal, state, and local codes and standards, *e.g.,* fire codes, electrical codes, safety codes, building codes, elevator codes.

(4) Restriction on exclusive agreement. A telecommunications utility shall not enter into an agreement, contract, pact, understanding or other like arrangement with the property owner to be the sole or exclusive provider of telecommunications services to a specific or defined group of actual or prospective tenants on the property.

(e) Procedures upon tenant request.

(1) Tour of property.

(A) Upon receiving a request for telecommunications services from a tenant, but prior to or concurrently with providing the property owner with notice of intent to install telecommunications equipment as described in paragraph (3) of this subsection, the requesting carrier may request, in writing, a tour of the property to determine an appropriate location for the telecommunications equipment needed to provide the telecommunications services requested by such tenant. This request shall identify the requesting tenant and be sent by certified mail, return receipt requested.

(B) The property owner shall provide such property tour within ten calendar days of receipt of the requesting carrier's written request.

(2) Request for technical drawings.

(A) In its written request for a tour of the property, the requesting carrier may request that the property owner provide computer aided design (CAD) drawings or similarly detailed drawings of the mechanical room(s), risers and other common spaces, if available, in order to assist the requesting carrier in developing plans and specifications for placement of telecommunications equipment.

(B) Such drawings should be provided to the requesting carrier, at the requesting carrier's expense, within ten calendar

days of the property owner's receipt of the requesting carrier's written request.

(3) Notice of intent to install telecommunications equipment.

(A) Upon receiving a request for telecommunications services from a tenant, the requesting carrier shall notify the property owner not fewer than 30 calendar days before the proposed date on which installation of telecommunications equipment needed to provide the telecommunications services requested by a tenant is to commence.

(B) Such notice shall be sent by certified mail, return receipt requested, to the property's on-site manager and to the person identified in the tenant's lease to receive notices. The requesting carrier shall also provide a copy of the notice of intent to any person designated by the property's on-site manager as the proper party to receive such notice.

(C) The requesting carrier shall include, but is not limited to, the following in its notice of intent:

(i) the identity of the requesting tenant;

(ii) the property address and building number (if applicable);

(iii) the proposed timeline for the installation of telecommunications equipment;

(iv) the type of telecommunications equipment to be installed;

(v) the proposed location, space requirements, proposed engineering drawings, and other specifications of the telecommunications equipment;

(vi) the conduit requirements, if any; and

(vii) a copy of PURA §§54.259, 54.260, and 54.261 and this section (Substantive Rule §26.129).

(f) Requirement to negotiate for 45 days.

(1) Upon receipt of the requesting carrier's notice of intent to install telecommunications equipment, the property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment and reasonable compensation due the property owner as a result of such installation.

(2) If such an agreement is not reached within 45 calendar days of the property owner's receipt of the requesting carrier's notice of intent, either party may file for resolution with the commission pursuant to subsection (i) of this section.

(3) The requesting carrier and the property owner may agree, in writing, to extend the period of negotiation prescribed by this subsection.

(g) Parameters for installation of telecommunications equipment. The property owner shall not deny the requesting carrier access to space, except due to inadequate space or safety concerns.

(1) Inadequate space.

(A) Property owner's denial due to inadequate space. The property owner may deny access to space if it does so within ten calendar days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the space and/or conduit required for installation is not sufficient to accommodate the requesting carrier's request.

(B) Demonstration of inadequate space.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that there is insufficient space and/or conduit to accommodate the requesting carrier's request for space. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access; or it may utilize any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten calendar days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten calendar days to dispute the property owner's assertion that a space limitation exists by pursuing commission resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(2) Safety concerns.

(A) Property owner's denial due to safety concern. The property owner may deny access to space if it does so within ten calendar days of its receipt of the requesting carrier's notice of intent to install telecommunications equipment, where the installation of the requesting carrier's telecommunications equipment would cause an unreasonable circumstance that would compromise the safety of the property and/or persons on the property.

(B) Demonstration of safety concern.

(i) In the event the property owner denies access to space, the property owner shall demonstrate that an unreasonable safety hazard that requires the denial of access to space exists. The property owner shall specify the alleged safety hazard and cite any applicable codes and/or standards. The property owner shall allow the requesting carrier to inspect the space and/or conduit to which it is denied access, or it may utilize any other method of proof mutually agreed upon by the property owner and the requesting carrier.

(ii) Such demonstration shall be completed within ten calendar days of the requesting carrier's receipt of the property owner's denial.

(iii) Following such demonstration or other agreed upon method of proof, the requesting carrier shall have ten calendar days to dispute the property owner's assertion that a safety hazard exists by pursuing commission resolution pursuant to subsection (i) of this section.

(C) The requesting carrier and the property owner may agree, in writing, to extend the timelines prescribed by this subsection.

(h) Parameters for determining reasonable compensation for access.

(1) The property owner and the requesting carrier shall attempt to reach a mutually acceptable agreement regarding reasonable and non-discriminatory compensation due the property owner as a result of the requesting carrier's installation of telecommunications equipment required to provide telecommunications services to a requesting tenant.

(2) The property owner shall not impose a fee on the requesting carrier unrelated to the requesting carrier's usage of space and/or provision of telecommunications services to a requesting

tenant, except as provided by agreement of the property owner and the requesting carrier.

(3) The property owner and the requesting carrier shall negotiate terms and conditions concerning the removal of the requesting carrier's telecommunications equipment upon the departure of a tenant served by such requesting carrier or the end of the service agreement between a tenant and the requesting carrier.

(4) The property owner may require a security deposit not to exceed an amount equal to one month of fees or rents as determined by the agreement between the requesting carrier and the property owner.

(i) Failure to reach negotiated agreement.

(1) Alternative Dispute Resolution. As an alternative to petitioning the commission for resolution of a dispute, parties may voluntarily submit any controversy or claim under this subsection to settlement by alternative dispute resolution. This alternative dispute resolution shall be conducted under the alternative dispute resolution procedures of Chapter 2009, Administrative Procedure Act, and Chapter 154, Civil Practice and Remedies Code.

(2) Petition to commission for resolution of dispute. If a mutually acceptable agreement regarding the installation of the requesting carrier's telecommunications equipment, the reasonable compensation due the property owner as a result of such installation, or other disputed issues is not reached within 45 calendar days of the property owner's receipt of the requesting carrier's notice of intent to install telecommunications equipment, either the property owner or the requesting carrier may petition the commission for resolution. The petition shall include proof of the requesting carrier's proper service of notice of intent to the property owner in the form of an affidavit and attached copy of return receipt.

(3) Types of disputes and information required for each.

(A) Installation dispute.

(i) The property owner may deny access consistent with subsection (g) of this section.

(ii) The property owner and the requesting carrier shall each provide the commission with information specifying the space or safety related installation dispute(s) that is preventing a negotiated agreement.

(iii) The property owner and the requesting carrier shall each provide the commission with information supporting its position in the dispute(s).

(B) Reasonable compensation dispute.

(i) The property owner shall provide the commission with the amount of compensation being sought and the basis for such claim, including information supporting the factors listed in clause (iii) of this subparagraph.

(ii) The requesting carrier shall provide the commission with information supporting the amount of compensation it deems reasonable to compensate the property owner for installation of its telecommunications equipment.

(iii) In determining a reasonable amount of compensation due the property owner for installation of the requesting carrier's telecommunications equipment, the commission may consider, but is not limited to, the following:

(I) the location and amount of space occupied by installation of the requesting carrier's telecommunications equipment;

(II) evidence that the property owner has a specific alternative use for any space which would be occupied by the requesting carrier's telecommunications equipment and which would result in a specific quantifiable loss to the property owner;

(III) the value of the property before and after the installation of the requesting carrier's telecommunications equipment and the methods used to determine such values;

(IV) possible interference of the requesting carrier's telecommunications equipment with the use and occupancy of the property which would cause a decrease in the rental or resale value of the property;

(V) actual costs incurred by the property owner directly related to installation of the requesting carrier's telecommunications equipment;

(VI) the market rate for similar space used for installation of telecommunications equipment in a similar property; and

(VII) the market rate for tenant leaseable space in the property or a similar property.

(C) Other disputed issues.

(i) The property owner and the requesting carrier shall each provide the commission with information specifying any other dispute(s) preventing a negotiated agreement.

(ii) The property owner and the requesting carrier shall each provide the commission with information supporting its position regarding these other dispute(s).

(4) Procedure.

(A) Upon the proper filing of a petition, as set forth in paragraph (1) of this subsection, the commission may proceed to resolution of a dispute pursuant to the commission's procedural rules as set forth in Chapter 22 of this title (relating to Practice and Procedure).

(B) In addition to the requirements set forth in paragraph (1) of this subsection, all petitions shall comply with the requirements of Chapter 22, Subchapter D of this title (relating to Notice) and Chapter 22, Subchapter E of this title (relating to Pleadings and Other Documents).

(C) The commission may grant interim relief, subject to true-up, so as not to impair or delay, the right of the requesting carrier to install, maintain, and remove its telecommunications equipment, or to provide telecommunications services to a requesting tenant, during the pendency of the proceeding.

(j) Administrative penalties. The provisions set forth in §22.246 of this title (relating to Administrative Penalties) shall apply to any violation 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 April 13, 2000.

TRD-200002642
Rhonda Dempsey
Rules Coordinator

Public Utility Commission of Texas
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-7308

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Part 9. TEXAS LOTTERY COMMISSION

Chapter 401. ADMINISTRATION OF STATE LOTTERY ACT

Subchapter A. PROCUREMENT

16 TAC §401.101

The Texas Lottery Commission proposes amendments to 16 TAC §401.101, relating to lottery procurement procedures.

The proposed amendments clarify the procedures to be followed by the agency when procuring goods and/or services pursuant to its authority under the State Lottery Act. Additionally, the proposed amendments incorporate recommendations made by the State Auditor's Office in SAO Report No. 99-050 entitled "A Report on the Procurement Practices at the Texas Lottery Commission." The proposed amendments also implement several provisions set forth in Senate Bill (SB) 177, §5, 76th Legislature, Regular Session. The proposed amendments also delete the portions of the rule that set out procurement protest procedures. Protest procedures may become the subject of separate rules.

Proposed amendments to the rule were originally published in the December 31, 1999, issue of the *Texas Register*, (24 TexReg 11848) (hereinafter referred to as "the proposed amendments as originally published"). The proposed amendments contained herein differ from the proposed amendments as originally published as follows: First, the proposed amendments now provide for a definition for the term "cost." Second, the proposed amendments now require, when conducting an informal competitive solicitation or an invitation for bids, the executive director or the executive director's designee to award a contract to the qualified bidder submitting the lowest and best price quotation, except that the executive director may reject all price quotations if it is determined to be in the best interest of the state. Third, the proposed amendments now require an amount to be added to a nonresident bidder's bid equal to the amount a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder has its principal place of business in determining the lowest bid submitted in response to an invitation for bids. Fourth, the proposed amendments now permit the executive director, or the executive director's designee to engage in simultaneous negotiations with proposers. Fifth, the proposed amendments correct several typographical errors that were contained in the rule as originally proposed.

The proposed amendments are being republished in order to provide notice of the changes to the proposed amendments as originally published and to allow for public comment on changes to the proposed amendment.

Richard Sookiasian, Budget Analyst, has determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no fiscal implications to state government or local government as a result of administering the proposed amendments.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no estimated reductions in costs to the state or to local governments as a result of administering the proposed amendments.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no estimated increases in revenue to the state or to local governments as a result of administering the proposed amendments. Mr. Sookiasian has also determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no estimated decreases in revenue to the state or to local governments as a result of administering the proposed amendments.

Mr. Sookiasian has also determined that administering the proposed amendments does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed amendments will be in effect, the public benefits anticipated as a result of administering the proposed amendments will be to clarify the procedures used by the agency in procuring goods and/or services made pursuant to its authority under the State Lottery Act.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed amendments will be in effect, there will be no probable economic cost to persons required to comply with the proposed amendments.

Mr. Sookiasian has also determined that there will be no cost to small businesses or individuals who are required to comply with the proposed amendments, and no effect on local employment is anticipated.

Comments on the proposed amendments may be submitted to Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The amendments to this section are proposed under §466.105, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules governing the establishment and operation of the lottery, §466.101, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules requiring any person seeking to contract for goods or services relating to the implementation and administration of the State Lottery Act to submit to competitive bidding procedures in accordance with the rules adopted by the Commission, §467.102, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, and Chapter 2001, Government Code, which provides for the adoption of administrative rules.

Texas Government Code, Chapter 466 is affected by the proposed section.

§401.101. Lottery Procurement Procedures.

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

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

(3) Commission – The agency created under chapter 467, Government Code [~~by House Bill 54, 72nd Legislature, First Called Session, as amended by House Bill 1587 and House Bill 1013, 73rd Legislature, Regular Session~~].

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

(6) IFB – A written invitation for bids [~~bid~~].

(7) (No change.)

(8) Nonresident bidder or proposer – A bidder or proposer whose principal place of business is not in Texas. [~~, but excludes a bidder or~~] A proposer whose ultimate parent company or majority owner has its principal place of business in Texas is considered a resident bidder or proposer.

(9) Principal place of business in Texas – A business entity that has at least one [~~permanent~~] office located in Texas, from which business activities other than submitting bids or proposals to governmental agencies are conducted, with at least one employee working in that office.

(10) Produced in Texas – Those goods that are manufactured in Texas, excluding the sole process of packaging or repackaging. Packaging or repackaging does not constitute being manufactured in Texas.

(11) (No change.)

(12) Resident bidder or proposer – A bidder or proposer whose principal place of business is in Texas. [~~, and includes~~] A [~~a~~] bidder or proposer whose ultimate parent company or majority owner has its principal place of business in Texas is considered a resident bidder or proposer.

(13) Services – Includes consultant services, personal services, professional services, facility services (i.e., the lease of real property, including utility and custodial service), [~~public relations,~~] telecommunications services, and advertising services.

(14) (No change.)

(15) Electronic State Business Daily or Business Daily – the website administered by the Department of Economic Development, or its successor, on which procurement opportunities are advertised in electronic format via the Texas Marketplace.

(16) Cost – the price at which the commission or executive director can purchase goods and/or services.

(b) Competitive solicitations.

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

(4) For the purchase of printing services, regardless of the amount, the commission must conduct a formal competitive solicitation in an attempt to obtain at least three competitive bids or proposals.

(5) (No change.)

(6) Notwithstanding paragraphs (1)-(3) of this subsection, the commission may make an emergency purchase or lease of goods or services if the commission will suffer financial or operational damage. Prior to making an emergency purchase or lease of goods or services, the existence of an emergency should be documented. For emergency purchases in excess of $5,000, the commission, at a minimum, must conduct an informal competitive solicitation in an attempt to obtain at least [~~lease~~] three competitive price quotations. The commission may ask the General Services Commission or any other appropriate entity for advice and assistance in the handling of an emergency purchase.

(7) Notwithstanding paragraphs (1)-(3) of this subsection, the commission may make a purchase or lease of goods or services under any other procedure authorized by law.

(c) Informal competitive solicitations.

(1) An informal competitive solicitation is a process conducted in an effort [~~order~~] to receive at least three competitive price quotations for a specifically identified good or service, without the advertisement and issuance of an IFB or RFP. The price quotations may be solicited by letter, electronic mail [~~telegram~~], facsimile, or telephone call. The following information must be recorded by the commission in the solicitation file:

(A) the name and telephone number of each person or company to which the price quotation was provided;

(B) [~~(A)~~] the name and telephone number of the person or company submitting the price quotation;

(C) [~~(B)~~] the time and date the price quotation was received;

(D) [~~(C)~~] the amount of the price quotation; and

(E) [~~(D)~~] the name and telephone number of the person receiving the price quotation for the commission [~~division~~].

(2) The executive director or the executive director's designees shall award a contract to the qualified bidder submitting the lowest and best price quotation , except that the executive director may reject all price quotations if it is determined to be in the best interest of the state. In determining the lowest price quotation, an amount will be added to a nonresident bidder's or proposer's price quotation equal to the amount a Texas resident bidder or proposer would be required to underbid a nonresident bidder or proposer to obtain a comparable contract in the state in which the nonresident bidder or proposer has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident bidder's or proposer's contract if one is awarded.

(3) (No change.)

(d) Formal competitive solicitations.

(1) (No change.)

(2) When an RFP is used by the commission, the RFP shall contain, at a minimum, the following:

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

(C) the time and date proposals are due, and the location/person they are to be submitted to; [~~and~~]

(D) an identification of the process [~~criteria~~] to be utilized in evaluating proposals and awarding a contract ; and [~~.~~]

(E) a listing of the factors to be utilized in evaluating proposals and awarding a contract. At a minimum, the factors should include:

(i) the proposer's price to provide the goods or services;

(ii) the probable quality of the offered goods or services;

(iii) the quality of the proposer's past performance in contracting with the commission, with other state entities, or with private sector entities;

(iv) the financial status of the proposer;

(v) the qualifications of the proposer's personnel;

(vi) the experience of the proposer in providing the requested goods or services; and

(vii) whether the proposer made a good faith effort to reach the minority participation goals set forth by the commission.

(3) Where time permits, the commission shall advertise formal competitive solicitations, whether by IFB or RFP, on [~~in~~] the Electronic State Business Daily [~~Texas Register~~]. The commission may advertise such solicitations in other media determined appropriate by the commission. [~~In addition, the commission shall provide a copy of the IFB or RFP to those vendors who have specifically expressed, in writing, an interest in providing certain goods or services to the commission and whose names and addresses are on file with the commission.~~]

(4) For formal competitive solicitations where an IFB is used, the executive director or the executive director's designee shall award a contract to the qualified bidder submitting the lowest and best bid, except that the executive director may reject all bids if it is determined to be in the best interest of the lottery [~~state~~]. In determining the lowest bid, an amount will be added to a nonresident bidder's bid equal to the amount a Texas resident bidder would be required to underbid a nonresident bidder to obtain a comparable contract in the state in which the nonresident bidder has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident bidder's contract if one is awarded. The contract shall be awarded by the issuance of a written purchase order. At the time the purchase order is issued, the commission shall also notify, in writing, all other bidders of the contract award by facsimile, or by certified mail, return receipt requested, or by overnight mail. Any information relating to the solicitation not made privileged from disclosure by law shall be made available for public disclosure after issuance of the purchase order pursuant to the Texas Open Records Act.

(5) For formal competitive solicitations where an RFP is used, the executive director or the executive director's designee(s) shall, prior to the deadline for receipt of proposals, develop and establish a comprehensive evaluation criteria [~~plan~~] to be utilized by an evaluation committee in evaluating the proposals and awarding a contract. [~~The evaluation plan shall be based upon the evaluation criteria used by the evaluation committee appointed by the executive director. If the evaluation criteria include price as one of the criteria,~~] In determining the lowest price, an amount will be added to a nonresident proposer's price proposal equal to the amount a Texas resident proposer would be required to underbid a nonresident proposer to obtain a contract in the state in which the nonresident proposer has its principal place of business. This added amount will only be used for evaluation purposes, and will not be included in the nonresident proposer's contract if one is awarded. All proposals that are responsive to the RFP [~~received~~] will be reviewed by the evaluation committee. The evaluation committee will evaluate and rank all proposals in accordance with the evaluation criteria [~~plan~~]. As part of the evaluation process, the top proposers may be requested to make an oral presentation to the committee, which may include an inspection trip to the proposer's facilities [~~at a mutually agreeable time and place~~]. The evaluation committee will then make a final ranking of all proposers who have made a presentation, based upon the presentation and the evaluation criteria [~~plan~~]. The committee will forward its written recommendation to the executive director, who will review the recommendation and make the final decision, including the acceptance of a proposal in whole or in part. The executive director or the executive director's designee(s) shall then attempt to negotiate a contract with the selected proposer or the executive director or the executive director's designee(s), at the sole discretion of the executive director or the executive director's designee(s) may engage in simultaneous negotiations with multiple proposers. If a contract cannot be negotiated with the selected proposer(s) on terms [~~proposer at a price~~] the executive director determines reasonable, negotiations with that proposer will be terminated, and negotiations will be undertaken with the next highest ranked proposer. This process will be continued until a contract is executed by a proposer and the executive director, or negotiations with the highest ranked proposers are terminated. If no contract is executed, the executive director or the executive director's designee(s) may attempt to negotiate a contract with any of the other proposers. Negotiations will continue until a contract is executed or all proposals are rejected. If a contract is executed, the commission shall promptly notify, in writing, all other proposers of the contract award by facsimile, or by certified mail, return receipt requested, or by overnight mail. Any information relating to the solicitation not made privileged from disclosure by law shall be made available for public disclosure after execution of the contract pursuant to the Texas Open Records Act.

(e) Preferences.

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

(6) A bidder or proposer entitled to a preference(s) under this subsection should claim the preference(s) in its bid or proposal. [~~However, a preference(s) may be granted to a bidder or proposer who fails to claim the preference(s) if documents attached to the bid or proposal clearly indicate entitlement to the preference(s).~~]

[~~(f) Protests.~~]

[~~(1) Any bidder or proposer aggrieved by the terms of any formal competitive solicitation, or with any contract award made pursuant to such a solicitation, may protest the commission's or the executive director's action. For the protest of a formal competitive solicitation, a protest must be filed, in writing, with the commission's general counsel within 72 hours after issuance of the IFB or RFP. For the protest of a contract award, a protest must be filed, in writing, with the commission's general counsel within 72 hours after receipt of notice of the execution of the contract. Protests not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel.~~]

[~~(2) To be considered, a protest must contain.~~]

[~~(A) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;~~]

[~~(B) a brief statement of the relevant facts;~~]

[~~(C) an identification of the issue or issues to be resolved;~~]

[~~(D) arguments and authorities in support of the protest;~~]

[~~(E) an affidavit that the contest of the protest are true and correct; and~~]

[~~(F) a certification that a copy of the protest (if to a contract award) has been served on the successful proposer.~~]

[(3) In the event of a timely filed protest of a solicitation, the executive director shall not proceed with issuance of a purchase order or execution of a contract unless the commission determines, in writing, that such action is necessary to protest the interests of the state.]

[(4) In the event of a protest of a contract award, the successful proposer may file a written response to the protest within 72 hours after the commission's receipt of the protest.]

[(5) The executive director will review the protest, any response, and the solicitation file; and will make a written determination of the protest. The written determination on the protest may include a determination cancelling the solicitation or voiding the contract. The executive director's written determination will be served, by facsimile, on the protestant and the successful proposer (if any). Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made. The protestant may appeal the determination of the executive director to the Texas Lottery Commission by filing a request with the general counsel not later than 72 hours after receipt of notice of the executive director's determination. Any appeal to the Texas Lottery Commission will be based solely on the written protest, any responses filed with the executive director, and the executive director's written determination The Texas Lottery Commission's determination of any appeal shall be administratively final when issued.]

(f) [g] Contract terms.

(1) When determined appropriate by the executive director, a contract for the purchase or lease of goods or services related to the implementation, operation, or administration of the lottery shall provide for liquidated damages and a performance bond in an amount equal to the executive director's best available estimate of the revenue that would be lost by the state if the contractor fails to meet deadlines specified in the contract or materially fails to perform its contractual obligations in any other manner. When such contract terms are determined appropriate by the executive director, the IFB or RFP shall reflect such requirement.

(2) When determined appropriate by the executive director, a contract for the purchase or lease of goods or services related to the implementation, operation, or administration of the lottery shall provide that the contractor, when utilizing subcontractors, shall give a preference to minority businesses, as defined in the State Lottery Act, Texas Government Code, §466.107. When such contract term is determined appropriate by the executive director, the IFB and RFP shall reflect such requirement.

(3) A contract for the purchase or lease of goods or services relating to the implementation, operation, or administration of the lottery shall provide that the executive director may terminate the contract, without penalty, if an investigation made pursuant to the Act reveals that the person to whom the contract was awarded would not be eligible to receive a sales agent license under the State Lottery Act, Texas Government Code, §466.155. An IFB or RFP may require that bidders or proposers provide in their bids or proposals sufficient information to allow the commission to determine whether the bidder or proposer meets the eligibility requirements for a sales agent license.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002702

Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 344-5113

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16 TAC §401.102

The Texas Lottery Commission proposes new 16 TAC §401.102, relating to protests of the terms of a formal competitive solicitation.

The new section sets forth the procedures to be followed during a protest of the terms of a formal competitive solicitation.

The proposed new section was originally published in the December 31, 1999, issue of the *Texas Register*, (24 TexReg 11852) (hereinafter referred to as "the proposed new section as originally published"). No changes have been made to the section as originally proposed.

Richard Sookiasian, Budget Analyst, has determined that for each year of the first five-year period the proposed section will be in effect, there will be no fiscal implications to state government or local government as a result of administering the proposed section.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated reductions in costs to the state or to local governments as a result of administering the proposed section.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated increases in revenue to the state or to local governments as a result of administering the proposed section. Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated decreases in revenue to the state or to local governments as a result of administering the proposed section.

Mr. Sookiasian has also determined that administering the proposed section does not have foreseeable implications relating to cost or revenues of state or local governments.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, the public benefits anticipated as a result of administering the proposed section will be to provide clear guidance relating to the procedures to be followed during a protest of the terms of a formal competitive solicitation.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no probable economic cost to persons required to comply with the proposed section.

Mr. Sookiasian has also determined that there will be no cost to small businesses, micro businesses or individuals who are required to comply with the proposed section, and no effect on local employment is anticipated.

Comments on the proposed section may be submitted to Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The new section is proposed under §466.105, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules governing the establishment and op-

eration of the lottery, §466.101, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules requiring any person seeking to contract for goods or services relating to the implementation and administration of the State Lottery Act to submit to competitive bidding procedures in accordance with the rules adopted by the Commission, §467.102, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, and Chapter 2001, Government Code, which provides for the adoption of administrative rules.

Texas Government Code, Chapter 466 is affected by the proposed section.

§401.102. Protests of the Terms of a Formal Competitive Solicitation.

(a) Any person aggrieved by the terms of any formal competitive solicitation may protest the commission's or the executive director's action.

(b) A protest of the terms of any formal competitive solicitation must be filed, in writing, with the commission's general counsel within 72 hours after issuance of the formal competitive solicitation. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the protest is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. A protests not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel.

(c) To be considered, a protest must contain:

(1) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;

(2) a brief statement of the relevant facts;

(3) an identification of the issue or issues to be resolved;

(4) arguments and authorities in support of the protest; and

(5) an affidavit that the contents of the protest are true and correct.

(d) In the event of a timely filed protest of a competitive solicitation, the executive director shall not proceed with issuance of a purchase order or execution of a contract unless the commission determines, in writing, that such action is necessary to protect the interests of the lottery.

(e) The executive director will review the protest, and the solicitation file; and will make a written determination of the protest. The written determination on the protest may include a determination canceling the solicitation. The executive director's written determination will be served, by facsimile, on the protestant. Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made.

(f) The protestant may appeal the determination of the executive director to the Texas Lottery Commission by filing an appeal with the office general counsel not later than 72 hours after receipt of notice of the executive director's determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the appeal is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. An appeal not filed timely will not be considered, and the appellant will be so notified in writing by the commission's general counsel.

(g) To be considered, an appeal must contain:

(1) a specific identification of the points of error alleged to be contained in the executive director's determination;

(2) a brief statement of the relevant facts;

(3) an identification of the issue or issues to be resolved;

(4) arguments and authorities in support of the appeal; and

(5) an affidavit that the contents of the appeal are true and correct.

(h) Any appeal to the Texas Lottery Commission will be based solely on the written protest, the executive director's written determination, and the written appeal.

(1) The Texas Lottery Commission, at its discretion, may allow oral argument by the protestant. The following procedure shall be followed if the Texas Lottery Commission grants oral argument:

(A) Each oral argument may be limited in time as deemed appropriate by the Texas Lottery Commission.

(B) Each oral argument will be based solely on the written protest, the executive director's written determination, and the written appeal.

(C) The executive director may be present, have the opportunity to make a presentation to the Texas Lottery Commission regarding the determination, and may be available to respond to questions by the Texas Lottery Commission.

(2) The Texas Lottery Commission's determination of any appeal shall be administratively final when issued.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002701
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 344-5113

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16 TAC §401.103

The Texas Lottery Commission proposes new 16 TAC §401.103, relating to protests of contract award.

The proposed section will set forth the procedures to be followed during a protest filed by a bidder or proposer aggrieved by the executive director's award of a contract made pursuant to a formal competitive solicitation.

The proposed new section was originally published in the December 31, 1999, issue of the *Texas Register*, (24 TexReg 11853) (hereinafter referred to as "the proposed new section as originally published"). No changes have been made to the section as originally proposed.

Richard Sookiasian, Budget Analyst, has determined that for each year of the first five-year period the proposed section will be in effect, there will be no fiscal implications to state government or local government as a result of administering the proposed section.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated reductions in costs to the state or to local governments as a result of administering the proposed section.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated increases in revenue to the state or to local governments as a result of administering the proposed section. Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no estimated decreases in revenue to the state or to local governments as a result of administering the proposed section.

Mr. Sookiasian has also determined that administering the proposed section does not have foreseeable implications relating to cost or revenues of the state or local governments.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, the public benefits anticipated as a result of administering the proposed section will be to provide clear guidance relating to the procedures to be followed during a protest filed by a bidder or proposer aggrieved by the executive director's award of a contract made pursuant to a formal competitive solicitation.

Mr. Sookiasian has also determined that for each year of the first five-year period the proposed section will be in effect, there will be no probable economic cost to persons required to comply with the proposed section.

Mr. Sookiasian has also determined that there will be no cost to small businesses, micro businesses or individuals who are required to comply with the proposed section, and no effect on local employment is anticipated.

Comments on the proposed section may be submitted to Ridgely C. Bennett, Deputy General Counsel, Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630.

The section is proposed under §466.105, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules governing the establishment and operation of the lottery, §466.101, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules requiring any person seeking to contract for goods or services relating to the implementation and administration of the State Lottery Act to submit to competitive bidding procedures in accordance with the rules adopted by the Commission, §467.102, Government Code, which provides the Texas Lottery Commission with the authority to adopt rules for the enforcement and administration of the State Lottery Act and the laws under the Commission's jurisdiction, and Chapter 2001, Government Code, which provides for the adoption of administrative rules.

Texas Government Code, Chapter 466 is affected by the proposed section.

§401.103. Protests of Contract Award.

(a) Any bidder or proposer aggrieved by a contract award made pursuant to a formal competitive solicitation may protest the executive director's action. For the protest of a contract award made pursuant to a formal competitive solicitation, a protest must be filed, in writing, with the commission's general counsel within 72 hours after receipt of notice of execution of the contract. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the protest is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. A protest not filed timely will not be considered, and the protestant will be so notified in writing by the commission's general counsel.

(b) To be considered, a protest must contain:

(1) a specific identification of the statutory provision, rule provision, or procurement procedure allegedly violated;

(2) a brief statement of the relevant facts;

(3) an identification of the issue or issues to be resolved;

(4) arguments and authorities in support of the protest;

(5) an affidavit that the contents of the protest are true and correct; and

(6) a certification that a copy of the protest has been served on the successful proposer(s).

(c) In the event of a protest of a contract award made pursuant to a formal competitive solicitation, the successful proposer(s) may file a written response to the protest within 72 hours after the commission's receipt of the protest. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the response is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel.

(d) The executive director will review the protest, any response, and the solicitation file; and will make a written determination of the protest. The written determination on the protest may include a determination voiding the contract. The executive director's written determination will be served, by facsimile, on the protestant and the successful proposer (if any). Confirmation of delivery to the designated facsimile machine will be conclusive proof that delivery was made.

(e) Any aggrieved bidder or proposer may appeal the determination of the executive director to the Texas Lottery Commission by filing an appeal with the office of the general counsel not later than 72 hours after receipt of notice of the executive director's determination. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the appeal is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. Appeals not filed timely will not be considered, and the appellant will be so notified in writing by the commission's general counsel.

(f) To be considered, an appeal must contain:

(1) a specific identification of the points of error alleged to be contained in the executive director's determination;

(2) a brief statement of the relevant facts;

(3) an identification of the issue or issues to be resolved;

(4) arguments and authorities in support of the appeal; and

(5) an affidavit that the contents of the appeal are true and correct.

(g) In the event of an appeal of the executive director's determination, the successful proposer(s) may file a written response to the appeal within 72 hours after the commission's receipt of the appeal. The stamp affixed by the office of the general counsel shall determine the time and date of filing. If the response is filed by facsimile transmission, the quality of the original hard copy shall be clear and dark enough to transmit legibly and it shall be the sender's sole responsibility to ensure complete, timely, and legible delivery to the office of the general counsel. Responses not filed timely will not be considered, and the respondent will be so notified in writing by the commission's general counsel.

(h) Any appeal to the Texas Lottery Commission will be based solely on the written protest, any timely filed responses to the written protest, the executive director's written determination, the written appeal, and any timely filed responses to the written appeal.

(i) The Texas Lottery Commission, at its discretion, may allow oral arguments by the aggrieved bidder or proposer and the successful bidder or proposer. The following procedure shall be followed if the Texas Lottery Commission grants oral argument:

(1) Each oral argument may be limited in time as deemed appropriate by the Texas Lottery Commission.

(2) Each oral argument will be based solely on the written protest, any timely filed responses to the written protest, the executive director's written determination, the written appeal, and any timely filed responses to the written appeal.

(3) The executive director may be present, have the opportunity to make a presentation to the Texas Lottery Commission regarding the determination, and may be available to respond to questions by the Texas Lottery Commission.

(j) The Texas Lottery Commission's determination of any appeal shall be administratively final when issued.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002703
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 344-5113

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TITLE 22. EXAMINING BOARDS

Part 10. TEXAS FUNERAL SERVICE COMMISSION

Chapter 203. LICENSING AND ENFORCEMENT – SPECIFIC, SUBSTANTIVE RULES

22 TAC §203.6

The Texas Funeral Commission proposes an amendment to §203.6, concerning Provisional Licenses.

The Texas Funeral Service Commission proposes an amendment to change the language regarding the requirement of the minimum length of time required of the provisional licensure program to be completed to be eligible to take the oral exit interview. The provisional licensee is required to complete 12 consecutive months of training to be eligible to become a licensed embalmer and/or funeral director. The provisional licensee will now be required to complete the apprenticeship to be eligible to take the oral exit interview. The minimum length of time indicated "12 months" is being added and the minimum length of time "10 months" is being deleted.

O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, has determined that for the first five-year period this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Robbins, Executive Director, Texas Funeral Service Commission, has determined that for each year of the first five years the section is in effect, there will be no effect on local government. There will be no effect on small or micro businesses. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is public benefit because the provisional licensee must complete twelve months of training.

Comments on the proposal may be submitted to O. C. "Chet" Robbins, Executive Director, Texas Funeral Service Commission, 510 South Congress Avenue, Suite 216, Austin, Texas 78704, (512) 36-2474. Comments may also be submitted electronically to crob@tfsc.state.tx.us or faxed to (512) 479-5064. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under §651.152 of the Texas Occupation Code, as amended by §18 of House Bill 3516, 76th Legislature, which authorizes the Commission to issue such rules and regulations as may be necessary to effect the intent of the provisions of this section.

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

§203.6. Provisional Licenses.

(a)-(i) (No change.)

(j) Upon completion of a minimum of 12 [~~10~~] months and 60 required cases of the provisional licensure program, each provisional licensee must appear before at least one member of the commission for an oral exit interview in order to demonstrate proficiency related to the duties of a funeral director and/or embalmer. Any person not recommended for licensure as a result of the exit interview shall have his or her program extended by a period of time and number of cases voted on by the commission. Upon completion of the additional time and cases, the provisional licensee must undergo further exit interviews and extensions until recommended for licensure.

(k)-(l) (No change.)

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

Filed with the Office of the Secretary of State, on April 12, 2000.

TRD-200002608

O.C. "Chet" Robbins
Executive Director
Texas Funeral Service Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 936-2474

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Part 23. TEXAS REAL ESTATE COMMISSION

Chapter 535. PROVISIONS OF THE REAL ESTATE LICENSE ACT

Subchapter F. EDUCATION, EXPERIENCE, EDUCATIONAL PROGRAMS, TIME PERIODS AND TYPE OF LICENSE

22 TAC §535.64

The Texas Real Estate Commission (TREC) proposes an amendment to §535.64, concerning accreditation of schools. The amendment would permit a currently accredited school to apply for accreditation for a new five-year period without providing detailed financial information if the school has provided the statutory surety bond or its equivalent and there are no unsatisfied final money judgments against the school.

Under §535.64, TREC accredits schools for five-year periods. A school must regularly apply for accreditation to continue to offer courses which would be accepted by TREC. As part of the regulation of the school, its finances are reviewed in TREC audits and in investigations if complaints are filed against the school. School owners have questioned whether it is necessary to provide additional information when filing an application if the school is currently accredited in good standing. The proposed amendment would simplify the reaccreditation process by lessening the amount of information that must be provided by currently accredited applicants. Schools which are unable to maintain the required $10,000 surety bond or its equivalent or which have not satisfied any final money judgments against them would be required to provide the detailed financial information set forth in the section.

Mark A. Moseley, General Counsel, has determined that for the first five-year period the sections are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section.

Mr. Moseley also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be a simplified process for accrediting existing schools. There is no anticipated economic cost to persons who are required to comply with the proposed section. There is no anticipated impact on small businesses, micro businesses or local or state employment as a result of implementing the section.

Comments on the proposal may be submitted to Mark A. Moseley, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas, 78711-2188.

The amendment is proposed under Texas Civil Statutes, Article 6573a, §5(h), which authorizes the Texas Real Estate Commission to make and enforce all rules and regulations necessary for the performance of its duties.

The statute which is affected by this proposal is Texas Civil Statutes, Article 6573a.

§535.64. Accreditation of Schools and Approval of Courses and Instructors.

(a) (No change.)

(b) Standards for approval of application for accreditation. To be accredited as a school, the applicant must satisfy the commission as to the applicant's ability to administer courses with competency, honesty, trustworthiness and integrity. If the applicant proposes to employ another person, such as an independent contractor, to conduct or administer the courses, the other person must meet this standard as if the other person were the applicant. The applicant also must demonstrate that the applicant has sufficient financial resources to conduct its proposed operations on a continuing basis without risk of loss to students attending the school and that the proposed facilities will be adequate and safe for conducting classes. <u>If the applicant is currently accredited, the applicant will be deemed to meet financial requirements imposed by this subsection once the applicant has provided the statutory bond or other security acceptable to the commission under §7(f) of the Act and there are no unsatisfied final money judgments against the applicant; otherwise, the application will be subject to the financial review provisions of this section.</u>

(c)-(o) (No change.)

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002641
Mark A. Moseley
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 465-3900

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

Chapter 53. FINANCE

Subchapter A. LICENSE FEES AND BOAT AND MOTOR FEES

31 TAC §53.1, §53.3

Texas Parks and Wildlife Department proposes amendments to §53.1 and §53.3, concerning fishing license fees and exemptions, and saltwater stamp fees. The amendment would rescind recent changes to reciprocal license agreements with Louisiana and Oklahoma, and increase the fee for the saltwater sportfishing stamp. The amendment is necessary to reestablish reciprocal license agreements with surrounding states, and to accelerate the department's commercial fishing license buy-back programs for shrimp, crab, and finfish. The amendment would

function by allowing seniors from Louisiana and Oklahoma to fish in Texas without a non-resident license if these two states enter into an agreement to provide the same privilege to Texas seniors who are 65 years of age or older, and by adding a $3.00 surcharge to the saltwater sportfishing stamp fee.

Jayna Burgdorf, Director of Special Projects, has determined that for each of the first five years that the amendment as proposed is in effect, there will be minimal fiscal implications to the department. There will be no fiscal implications to other units of state or local governments as a result of enforcing or administering the amendment. The department may lose a minimal amount of revenue derived from current sales of non-resident licenses to seniors from Oklahoma and Louisiana; however, this funding stream has been available in only the current fiscal year. Proposed changes will return the department to the funding situation that existed prior to the current fiscal year when no license revenue was derived from seniors from these two states. With respect to the proposed increase in the saltwater sportfishing stamp fee, the department estimates that sales of the stamp will decline by no more than 6.0% in FY 2001, and then should remain constant or increase in FY 2002-2005. Therefore, the department estimates a revenue increase of approximately $1.4 million in FY 2001, which should remain constant or increase in FY2002-FY2005.

Ms. Burgdorf also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be that Texas seniors will not be charged for fishing public waters in Louisiana and Oklahoma, and that the department's commercial license buy-back program, which aims to reduce commercial fishing pressure on shrimp, crab, and finfish in order to manage and conserve those resources, will be better funded, resulting in greater recreational opportunity and healthier natural resources for the citizenry.

There will be no effect on small businesses or micro-businesses. There will be a cost to persons required to comply with the rule as proposed, namely, the $3 increase in the cost of a saltwater sportfishing stamp for persons who fish in the salt water of this state.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as this agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Ken Kurzawski (reciprocal licenses; (512) 389-4591) or Paul Hammerschmidt (saltwater sportfishing stamp; (512) 389-4650), or by writing to either gentleman at Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; or 1-800-792-1112.

The amendments are proposed under the authority of Parks and Wildlife Code, Chapter 41, which authorizes the commission to negotiate with other states to provide reciprocal hunting and fishing privileges; Chapter 43, Subchapter M, which authorizes the commission to set the fee for the saltwater sportfishing stamp; and Chapter 46, Subchapter A, which provides the Commission with authority to waive or lower fishing license fees.

The proposed amendments affect Parks and Wildlife Code, Chapters 41, 43, and 46.

§53.1. License Issuance Procedures, Fees, Possession and Exemption Rules.

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

(d) The following categories of persons are exempt from fishing license requirements and fees for the license years beginning September 1, 2000 [~~(1999)~~], and thereafter:

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

(3) non-residents 65 years of age or older who are residents of Louisiana [~~whose birthdate is before September 1, 1930 and whose state of residence enters into a reciprocal agreement with Texas~~];

(4) non-residents 64 years of age or older who are residents of Oklahoma;

(5) [~~(4)~~] residents whose birth date is before September 1, 1930;

(6) [~~(5)~~] persons who hold valid Louisiana non-resident fishing licenses while fishing on all waters inland [~~that form a common boundary between Texas and Louisiana~~] from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to persons who hold valid Texas annual or temporary non-resident fishing licenses; and

(7) [~~(6)~~] residents of Louisiana who meet the licensing requirements of their state while fishing on all waters inland [~~that form a common boundary between Texas and Louisiana~~] from a line across Sabine Pass between Texas Point and Louisiana Point that form a common boundary between Texas and Louisiana if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas fishing licenses.

(e) (No change.)

§53.3. Other Recreational Hunting and Fishing Licenses, Stamps, and Tags

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

(d) Fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 2000 [~~1999~~], and thereafter:

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

(3) special resident fishing (type 203)–$6.00[~~. Nonresidents who are 65 years of age or older and whose state of residence enters into a reciprocal agreement with Texas are designated as residents and may purchase a special resident fishing license~~];

(4)-(9) (No change.)

(e) Fishing stamps. The following stamp fee amounts are effective for the license year beginning September 1, 2000 [~~1996~~], and thereafter, except for the provisions of paragraph (1) of this subsection, which shall expire September 1, 2005:

(1) saltwater sportfishing (type 211)–$7.00; [~~and~~]

(2) saltwater sportfishing stamp surcharge, to be effective until September 1, 2005 - $3.00; and

(3) [~~(2)~~] freshwater trout (type 212)–$7.00.

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

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002719
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 389-4775

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31 TAC §53.2

The Texas Parks and Wildlife Department proposes the amendment of §53.2, concerning Combination Hunting and Fishing Licenses, Packages, and Conservation Permits. The amendment creates discounted combination (hunting and fishing privileges) and super-combination licenses (hunting and fishing privileges, plus stamps for turkey, white-winged dove, archery hunting, state waterfowl, muzzleloader hunting, saltwater sportfishing, and freshwater trout) for residents over the age of 65. The amendment is necessary to provide reduced rates for senior citizens, who are able to buy discounted hunting licenses and discounted fishing licenses, but for who no discounted combination licenses exist. The amendment will function by establishing a range of fees for licenses that are available only to residents 65 years of age or older.

Jayna Burgdorf, Director of Special Projects, has determined that for each of the first five years that the amendment as proposed is in effect, there will be minimal fiscal implications to the department. Based on license sales to seniors in FY 1999, the department estimates that the introduction of the senior combination (based on an estimated fee of $10) and the senior super combination license (based on an estimated fee of $20) will result a revenue reduction of less than $30,000 for FY 2001, and the potential for a revenue increase of $50,000-100,000 for each fiscal year 2002-2005. The department believes that by offering the discounted combination and super-combination licenses, customers who otherwise might have purchased hunting and fishing licenses separately will purchase the discounted licenses, and, as an offset, those who would have purchased only one stamp will purchase of the super-combination license, spurred by inherent value and convenience of the package.

Ms. Burgdorf also has determined that for each of the first five years the amendment as proposed is in effect, the public benefit anticipated as a result of enforcing the rule as proposed will be the ability of senior citizens, many of whom are on fixed and low incomes, and for whom no discounted combination license packages exist, to enjoy outdoor recreation with greater ease by being able to purchase one license instead of two, while at the same time contributing to the conservation and management of the state's wildlife resources.

There will be no effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed, as no person will be required to purchase a discounted license.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendment.

Comments on the proposed rule may be submitted to Jayna Burgdorf, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-8430 or 1-800-792-1112.

The amendment is proposed under Parks and Wildlife Code, §42.012, which provides the commission with authority to set a lower fee or waive the fee for a resident hunting license for a resident who is 65 years old or older; §46.004, which provides the commission with authority to set a lower fee or waive the fee for a resident fishing license for a resident who is 65 years old or over; and Chapter 50.001, which authorizes the commission to establish a combination hunting and fishing license for residents.

The amendment affects Parks and Wildlife Code, Chapters 42, 46, and 50.

§53.2. Combination Hunting and Fishing Licenses, Packages, and Conservation Permits.

(a) Combination hunting and fishing licenses. The following license fee amounts are effective for the license year beginning September 1, 2000 [~~1996~~], and thereafter:

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

(3) lifetime resident combination hunting and fishing (type 990)–$1,000; and [~~,~~]

(4) resident senior combination (type 114)–$9-11.

(b) Combination license packages. The following license fee amounts are effective for the license year beginning September 1, 2000 [~~1996~~], and thereafter:

(1) resident super combination hunting and fishing (package includes combination hunting and fishing license plus the privileges associated with the following stamps: turkey, white-winged dove, archery hunting, state waterfowl, muzzleloader hunting, saltwater sportfishing, and freshwater trout) (type 111)–$49; [~~and~~]

(2) resident senior super combination hunting and fishing (package includes combination hunting and fishing license plus the privileges associated with the following stamps: turkey, white-winged dove, archery hunting, state waterfowl, muzzleloader hunting, saltwater sportfishing, and freshwater trout) (type 117)–$19-25; and

(3) [~~(2)~~] all purpose resident combination hunting and fishing (package includes combination hunting and fishing license; the privileges associated with the following stamps: turkey, white-winged dove, archery hunting, state waterfowl, muzzleloader hunting, saltwater sportfishing, and freshwater trout; conservation permit; and annual state park entrance permit) (type 500)–$100.

(c) (No change.)

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002718
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 28, 2000

For further information, please call: (512) 389-4775

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Chapter 57. FISHERIES

Subchapter A. HARMFUL OR POTENTIALLY HARMFUL EXOTIC FISH, SHELLFISH, AND AQUATIC PLANTS

31 TAC §§57.111, 57.113, 57.116, 57.118, 57.119, 57.123, 57.131, 57.132

The Texas Parks and Wildlife proposes amendments to §§57.111, 57.113, 57.116, 57.118, 57.119, 57.123, 57.131, and 57.132, concerning Harmful or Potentially Harmful Exotic Fish, Shellfish and Aquatic Plants. The proposed amendments are intended to simplify the permitting and reporting procedures. The proposed amendments will correct the scientific name for several species of penaeid shrimps referred to throughout the rules. The amendments to §57.113 and §57.118 will provide permits for removal of prohibited plant species from public waters and allow operators of wastewater treatment facilities to possess permitted exotic species for water treatment purposes. The amendment to §57.123 will require annual reports to be submitted to the department by permittees that import, transport, transfer or sell triploid grass carp.

Robin Reichers, Staff Economist, has determined that during the first five years the rules as proposed are in effect there will be no additional fiscal implications to state or local government as a result of administering and enforcing the sections.

Mr. Reichers also has determined that for each of the first five years that the amendments as proposed are in effect, the public benefit anticipated as a result of enforcing the amendments as proposed will be the increased protection of aquatic animal life.

There will be no effect on small businesses, microbusinesses, or persons required to comply with the rule as proposed.

The department has not filed a local impact statement with the Texas Employment Commission as required by Government Code, §2001.022, as this agency has determined that the rule as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed amendment.

Comments on the proposed rule may be submitted to Joedy Gray, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-8037 or 1-800-792-1112. Comments must be received no later than 5:00 p.m., Monday May 30, 2000 in order to be considered.

The amendments are proposed under Parks and Wildlife Code, §66.007, Chapter 66, which authorizes the department to make rules to carry out the provisions of that section.

The proposed amendments affect Texas Parks and Wildlife Code §66.007.

§57.111. Definitions.

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

(1)-(14) (No change.)

(15) Harmful or potentially harmful exotic shellfish–

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

(E) Penaeid Shrimp Family: Penaeidae–all species of genus Litopenaeus and Farfantepenaeus except L. setiferus, F. aztecus and F. duorarum [~~Penaeus except P. setiferus, P. aztecus, and P. duorarum~~];

(F) (No change.)

(16)-(33) (No change.)

§57.113. Exceptions.

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

(e) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport, or sell Pacific white shrimp (Litopenaeus [~~Penaeus~~] vannamei) provided the exotic shellfish meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(f) An operator of a wastewater treatment facility in possession of a valid exotic species permit issued by the department may possess and transport permitted exotic species [~~water hyacinth (Eichornia crassipes)~~] to their facility only for the purpose of wastewater treatment.

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

(i) A licensed retail or wholesale fish dealer is not required to have an exotic species permit to purchase or possess:

(1) live individuals of species or hybrids of species listed in subsection (d) [~~(c)~~] of this section held in the place of business, unless the retail or wholesale fish dealer propagates one or more of these species. However, such a dealer may sell or deliver these species to another person only if the intestines or head of the fish are removed; or

(2) Live Pacific white shrimp (Litopenaeus [~~Penaeus~~] vannamei) held in the place of business if the place of business is not located within the Harmful or Potentially Harmful Exotic Species Exclusion Zone. However, such a dealer may only sell or deliver this species to another person if the shrimp are dead and packaged on ice or frozen.

(j)-(k) (No change.)

(l) A fish farmer who holds a valid exotic species permit issued by the department may possess, propagate, transport and sell Pacific blue shrimp (Litopenaeus [~~Penaeus~~] sylirostris) provided the exotic shellfish are cultured under quarantine conditions in private facilities located outside the harmful or potentially harmful exotic species exclusion zone, and meet disease free certification requirements listed in §57.114 of this title (relating to Health Certification of Exotic Shellfish) and as provided by conditions of the permit and these rules.

(m) (No change.)

(n) An operator of a mechanical plant harvester in possession of a valid exotic species permit issued by the department may remove and dispose of prohibited plant species from public or private waters only by means authorized in the permit.

§57.116. Exotic Species Transport Invoice.

(a) (No change.)

(b) The exotic species transport invoice shall be provided by the permittee; one copy shall be retained by the permittee for a period of at least one year following shipping date and one copy shall be forwarded to the department's Exotic Species Program Leader [~~aquaculture coordinator~~].

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

§57.118. Exotic Species Permit Issuance.

(a) The department may issue an Exotic Species Permit only to:

(1) (No change.)

(2) a wastewater treatment facility operator only for possession and use of permitted exotic species [~~waterhyacinth~~];

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

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

§57.119. Exotic Species Permit: Requirements for Permits.

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

(c) If a permittee discontinues fish farming, research activities or public aquarium display involving harmful or potentially harmful exotic species or discontinues wastewater treatment utilizing permitted exotic species [~~water hyacinth~~], the permittee shall:

(1) (No change.)

(2) notify the department's Exotic Species Program Leader [~~aquaculture coordinator~~] at least 14 days prior to cessation of operation.

(d) (No change.)

(e) In the event that the fish farm, private facilities or a wastewater treatment facility of a permit holder appears in imminent danger of overflow, flooding, or release of harmful or potentially harmful exotic fish, shellfish or aquatic plants into public water, the permittee shall:

(1) immediately notify the department [~~aquaculture coordinator~~];

(2) (No change.)

(f) Except in case of an emergency, a holder of an exotic species permit authorizing possession of Litoenaeus [~~Penaeus~~] vannamei must notify the department at least 72 hours prior to, but not more than seven days prior to any harvesting of permitted shellfish. In an emergency beyond the control of the permittee, notification of harvest must be made as early as practicable prior to beginning of harvest operations.

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

(i) A holder of an exotic species permit must notify the department's Exotic Species Program Leader [~~aquaculture coordinator~~] in the event of escapement or release of harmful or potentially harmful exotic fish or shellfish, within two hours of discovery.

(j)-(k) (No change.)

(l) A permittee must notify the department's Exotic Species Program Leader [~~aquaculture coordinator~~] in the event of change of ownership of the fish farm named in that permittee's exotic species permit. Notification must be made immediately.

(m) Permits are not transferable from site to site [~~or from person to person~~].

§57.123. Exotic Species Permit Reports.

(a) (No change.)

(b) An Exotic Species Permit holder who has imported, possessed, transported, transferred or sold triploid grass carp shall [~~submit a quarterly report to the department on or before April 10, July 10, and October 10 of each year. This report shall be submitted on a form provided by the department and shall include:~~]

[~~(1) a copy of each exotic species transport invoice issued during the past quarterly period; and~~]

[~~(2)~~] provide a copy of each exotic species transport invoice issued and a copy of each triploid grass carp certification received by the permittee for triploid grass carp purchased during the past year with their annual report [~~quarterly period~~].

§57.131. Exotic Species Interstate Transport Permit: Application and Issuance.

(a) (No change.)

(b) To apply for an Exotic Species Interstate Transport Permit an applicant shall:

(1) (No change.)

(2) remit to the department's Exotic Species Program Leader [~~department aquaculture coordinator~~] all applicable fees.

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

§57.132. Exotic Species Interstate Transport Permit: Permittee Requirements.

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

(c) Permittee must notify the department's Exotic Species Program Leader [~~aquaculture coordinator~~] in writing or by facsimile transmission at least 72 hours prior to transport of live harmful or potentially harmful exotic species indicating transport date, intended transportation route, and name and physical address of recipient.

(d) While transporting harmful or potentially harmful exotic species within the state of Texas, a holder of an Exotic Species Interstate Transport Permit must notify the department's Exotic Species Program Leader [~~aquaculture coordinator~~] in the event of escapement or release of harmful or potentially harmful exotic species within two hours of release.

(e) (No change.)

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002720
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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Subchapter K. SCIENTIFIC AREAS

31 TAC §57.920, §57.921

The Texas Parks and Wildlife Department proposes new §57.920 and §57.921, concerning state scientific areas. The proposed new sections implement rules for management of state scientific areas established for the purpose of education,

scientific research, and preservation of flora and fauna of scientific and educational value.

Submerged seagrass meadows are a dominant, unique subtropical habitat in many Texas bays and estuaries. These highly evolved marine flowering plants play critical roles in the coastal environment, including nursery habitat for estuarine fisheries, as a major source of organic biomass for coastal food webs, effective agents for stabilizing coastal erosion and sedimentation, and major biological agents in nutrient cycling and water quality processes. Recent studies show that seagrasses are sensitive to nutrient enrichment and water quality problems, as well as physical stress from human disturbances. As a result, many Texas scientists, resource managers and environmentally aware citizens have concerns about the ecosystem health of these seagrass resources.

In January, 1999 Texas Parks and Wildlife (TPW), Texas General Land Office and the Texas Natural Resource Conservation Commission published 'The Seagrass Conservation Plan for Texas.'

Each of the three agencies targeted critical issues for immediate action. TPW focus is on these initiatives: coastwide efforts to determine status and trends of seagrass beds and species distribution on a regular basis; maintenance of a central seagrass library and database developed by the resource agencies and research institutions; and public education and outreach activities to help protect seagrasses from human disturbance.

In fulfilling this charge, TPW staff identified the first coastal areas that will require active boater education, seagrass restoration and protection. The first is Redfish Bay located in Aransas, San Patricio and Nueces Counties. Anglers are brought to this area by ease of access and excellent angling. Increases in boat traffic characteristic of this area has led to a significant fragmentation of seagrass resources which threatens the future of this system. Further, user-conflicts between traditional and recently evolved fishing strategies have begun to rapidly escalate.

A second site, located south of Baffin Bay in an area called the "Nine-Mile Hole," was selected as a pilot site to determine the effects of boat traffic on fishing experience. The Nine-Mile Hole provides an opportunity for assessing strategies for reducing user-conflicts and providing quality fishing experiences as well as assessing seagrass trends in low impact areas.

The rules as proposed create two scientific areas, one in Redfish Bay and the second in the Nine-Mile Hole. Each scientific area would be in effect for five years from the date of creation and would "sunset" in the absence of reauthorization from the Parks and Wildlife Commission.

The proposed Redfish Bay Scientific Area would encompass a triangular area bounded by Estes Cove on the north, Dagger Island on the south and the intersection of Lydia Ann Channel and the Corpus Christi Ship Channel on the east. Delineation of the Scientific Area provides flexibility necessary to mark channels, running lanes and shallow water areas and to meet requirement of the TPW agreement with the Texas General Land Office to assume maintenance and responsibility for informational signs and depth markers.

A citizen's Seagrass Task Force, in conjunction with staff and local anglers, identified four areas of concern in Redfish Bay:

The area of Estes Flats called Redfish Cove. This consists of two smaller sub-coves, Trout Bayou and Turtle Bayou. This flat is one of the most severely impacted areas in this system. Turtle Bayou has a navigable channel that connects the GIWW and eastern side of Traylor Island.

The Terminal Flats area, which represents one of the most extensive and fragmented turtle grass beds in Aransas Bay and one of the most frequently used areas for shortcutting between the GIWW and the Aransas Pass to Port Aransas Boat Channel. Turtlegrass is a climax species that takes up to five years to regenerate when affected.

Brown and Root Flat lies just south of the Port Aransas to Aransas Pass causeway. The southern most area of this flat is home to another large, substantially intact turtlegrass flat. There is minimal prop scarring over the entirety of this flat, probably because it is relatively inaccessible to boat traffic.

North Harbor Island (the area behind the Port Aransas Lighthouse often referred to as the Lighthouse Lakes) is very shallow and virtually inaccessible by any propeller-driven boat. It has focal seagrass beds, and minimal prop scarring. However, the complexity of the system of marine "lakes" and "creeks" renders navigation difficult.

Management strategies for protection of seagrass resources in Redfish Bay include "prop up" zones in Estes Cove (Redfish Cove), Terminal Flat and the Brown and Root Flat and a system of marked access trails in North Harbor Island. However, these prop up areas are proposed as voluntary areas and any changes to the number, placement, size and nature (that is, voluntary versus mandatory) of prop up areas in Redfish Bay would not be undertaken in the absence of Commission action.

The management strategy for the Nine-Mile Hole includes creation of a state scientific area and a mandatory no-run zone in waters of the state. The no-run zone would effectively exclude all motorized boat traffic (including jet boats and air boats) from an area that represents approximately the northwest quadrant of the Nine-Mile Hole with the exception of electric trolling motors, except that traffic which was necessitated by emergency or for law enforcement activities, or that which is authorized by Parks and Wildlife Code §81.504. The area of the Nine-Mile Hole directly east of the proposed scientific area is part of the Padre Island National Seashore and under the authority of the National Parks Service. The Padre Island National Seashore will partner with Texas Parks and Wildlife by establishing a voluntary no run zone in the waters of the national seashore north of the Nine-Mile Hole Channel. Entrance into the Nine-Mile Hole is proposed to be restricted except through one of three dredged channels (Roloff Channel, 201 Channel and Nine-Mile Hole Channel).

Figure: 31 TAC Chapter 57–Preamble

The proposals for both Redfish Bay and the Nine-Mile Hole were the subject of a public meeting in Corpus Christi on March 15, 2000. Several constituents who could not attend that public meeting submitted comments concerning modifying the Nine-Mile Hole proposal to include a less restrictive, seasonal no run zone for the area. Although this suggestion is not included in the rules as proposed, the Department will explore this option with constituents, and seeks public comment regarding a seasonal mandatory restriction within the period of May 1 through October 1 of each calendar year.

Specific information concerning management strategies for Redfish Bay and Nine-Mile Hole can be obtained from the TPW website: http://www.tpwd.state.tx.us/admin/about_us/financial_rpts/pdf_docs/combinedplanscientificarea.pdf, or by contacting Dr. Bill Harvey, 4200 Smith School Road, Austin, Texas, 78744, 512-389-4642, email bill.harvey@tpwd.state.tx.us.

Dr. Bill Harvey, Aquatic Policy Coordinator, has determined that for each of the first five years that the proposed new sections are in effect, there will be no negative financial implication to state or local governments as a result of enforcing or administering the proposed new sections.

Dr. Harvey also has determined that for each of the first five years the proposed new sections are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be protection of fragile coastal seagrass resources and increased recreational opportunities.

There may be an effect on small businesses or microbusinesses, however, the department anticipates these effects to be positive economic effects. Increased recreational opportunities should enhance local recreation enterprises. Protection of coastal habitats should result in preservation of long term economic activities. There are no economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, Section 2001.022, as this agency has determined that the rules as proposed will not negatively impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Dr. Bill Harvey, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4642 or 1-800-792-1112.

The new sections are proposed under Parks and Wildlife Code, Chapter 13, Subchapter B that authorizes the Commission to adopt rules governing activities in state scientific areas and Parks and Wildlife Code, §§81.501-81.502 that authorizes the Commission to create state scientific areas.

The new rules as proposed affect Parks and Wildlife Code, Chapter 13, Subchapter B, and Chapter 81, Subchapter F.

§57.920. Nine-Mile Hole State Scientific Area.

(a) Purpose: The Nine-Mile Hole State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.

(b) Term: July 1, 2000 through June 30, 2005.

(c) Boundaries:

(1) N 27 10.451; W 097 25.825 (North boundary of Nine-Mile Hole);

(2) N 27 04.587; W 097 25.283 (Padre Island National Seashore Boundary);

(3) N 27 06.109; W 097 25.216 (Padre Island National Seashore Boundary);

(4) N 27 08.835; W 097 26.297 (Roloff Channel Entrance);

(5) N 27 06.109; W 097 26.495 (201 Channel Entrance); and

(6) N 27 05.132; W 097 25.905 (Nine-Mile Hole Channel Entrance).

(d) No person may:

(1) operate any airboat, jet-boat or any propeller-driven vessel within the boundaries of the Nine-Mile Hole State Scientific Area, except:

(A) in the event of an emergency which threatens human health and safety and which necessitates immediate entrance to or exit from the area;

(B) electric trolling motors;

(C) within ingress and egress lanes marked by the department;

(D) for law enforcement activities; or

(E) as provided in Parks and Wildlife Code §81.504.

(2) move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department within, or to delineate boundaries, of the Nine-Mile Hole State Scientific Area.

(e) The penalty for violation of this section is prescribed by Parks and Wildlife Code§13.112.

§57.921. Redfish Bay State Scientific Area.

(a) Purpose: The Redfish Bay State Scientific Area is established for the purpose of education, scientific research, and preservation of flora and fauna of scientific or educational value.

(b) Term: July 1, 2000 through June 30, 2005.

(c) Boundaries:

(1) 27 59.29 N; 097 4.03 W (Northern extremity of island forming northern boundary of Estes Cove);

(2) 27 53.51 N; 097 8.02 W (Intersection of GIWW and Aransas Pass Shrimp Boat Channel);

(3) 27 49.12 N; 097 11.27 W (Southern extremity of Dagger Island);

(4) 27 50.40 N; 097 3.32 W (Intersection of Lydia Ann Channel and Corpus Christi Ship Channel);

(5) 27 52.42 N; 097 2.47 W (A point in Lydia Ann Channel);

(6) 27 55.02 N; 097 03.46 (Mouth of Corpus Christi Bayou).

(d) No person may move, remove, deface, alter, or destroy any sign, depth marker or other informational signage placed by the department within, or to delineate boundaries, of the Redfish Bay State Scientific Area.

(e) The penalty for violation of this section is prescribed by Parks and Wildlife Code, §13.112.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002721
Gene McCarty

Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 389-4775

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Chapter 65. WILDLIFE

Subchapter N. MIGRATORY GAME BIRD PROCLAMATION

31 TAC §§65.314, 65.315, 65.317-65.321

The Texas Parks and Wildlife Commission proposes amendments to §§65.314, 65.315, and 65.317 - 65.321, concerning the Migratory Game Bird Proclamation. The amendment to §65.314, concerning Zones and Boundaries for Early Season Species, creates additional recreational opportunity by opening the previously closed mid- and lower-Gulf coasts to sandhill crane hunting. The amendment to §65.315, concerning Open Seasons and Bag and Possession Limits - Early Season Species, adjusts the season dates for early-season species of migratory game birds to account for calendar-shift. The amendment to §65.317, concerning Zones and Boundaries for Late Season Species, creates a new Central Goose Zone in order to allow the dark goose season in north-central Texas to run its full length prior to the opening of the special conservation season for light geese. The amendment to §65.118, concerning Open Seasons and Bag and Possession Limits - Late Season Species, adjusts the season dates for late-season species of migratory game birds to account for calendar-shift. The amendment to §65.319, concerning Extended Falconry Season–Early Season Species, adjusts season dates for the take of early-season species of migratory game birds by means of falconry. The amendment to §65.320, concerning Extended Falconry Season–Late Season Species, adjusts season dates for the take of late-season species of migratory game birds by means of falconry. The amendment to §65.321, concerning Special Management Provisions, establishes dates and special regulations for the take of light geese during the special conservation season. The amendments are necessary to implement commission policy to provide maximum hunter opportunity possible under frameworks issued by the U.S. Fish and Wildlife Service (Service). The Service has not issued regulatory frameworks for the 1999-2000 hunting seasons for migratory game birds; thus, the department cautions that the proposed regulations are tentative. However, the department intends to follow commission policy in adopting the most liberal provisions possible under the frameworks in order to provide maximum hunter opportunity.

Robert Macdonald, Wildlife Division Regulations Coordinator, has determined that for the first five years that the amendments as proposed are in effect, there will be no additional fiscal implications to state or local governments of enforcing or administering the amendments.

Mr. Macdonald also has determined that for each of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing the rules as proposed will be the department's discharge of its statutory obligation to manage and conserve the state's populations of migratory game birds, as well as the implementation of commission policy to maximize recreational opportunity for the citizenry.

There will be no effect on small businesses or microbusinesses. There are no additional economic costs to persons required to comply with the rules as proposed.

The department has not filed a local impact statement with the Texas Workforce Commission as required by Government Code, §2001.022, as the department has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may submitted to Vernon Bevill, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas, 78744; (512) 389-4578 or 1-800-792-1112.

The amendments are proposed under Parks and Wildlife Code, Chapter 64, which authorizes the Commission and the Executive Director to provide the open season and means, methods, and devices for the hunting and possessing of migratory game birds.

The amendments affect Parks and Wildlife Code, Chapter 64.

§65.314. Zones and Boundaries for Early Season Species.

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

(e) Sandhill cranes.

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

(3) Zone C: the remainder of the state, except for the closed areas specified in paragraph (4) of this subsection.

(4) closed areas:

(A) that portion of the state lying east and north of a line beginning at the junction of Interstate Highway 35 and the Texas-Oklahoma state line, thence south along Interstate Highway 35 (following Interstate Highway 35 West through Fort Worth) to its junction with U.S. Highway 290 East in Austin, thence east along U.S. Highway 290 to its junction with Interstate Loop 610 in Harris County, thence south and east along Interstate Loop 610 to its junction with Interstate Highway 45 in Houston, thence south on Interstate Highway 45 to the shore of the Gulf of Mexico, and thence north and east along the shore of the Gulf of Mexico to the Texas-Louisiana state line.

(B) that portion of the state lying within the boundaries of a line beginning at the Kleberg-Nueces county line and the shore of the Gulf of Mexico, thence west along the county line to Park Road 22 in Nueces County, thence north and west along Park Road 22 to its junction with State Highway 358 in Corpus Christi, thence west and north along State Highway 358 to its junction with State Highway 286, thence north along State Highway 286 to its junction with Interstate Highway 37, thence east along Interstate Highway 37 to its junction with U.S. Highway 181, thence north and west along U.S. Highway 181 to its junction with U.S. Highway 77 in Sinton, thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 in Victoria, thence south and east along U.S. Highway 87 to its junction with State Highway 35 at Port Lavaca, thence north and east along State Highway 35 to the south end of the Lavaca Bay Causeway, thence south and east along the shore of Lavaca Bay to its junction with the Port Lavaca Ship Channel, thence south and east along the Lavaca Bay Ship Channel to the Gulf of Mexico, and thence south and west along the shore of the Gulf of Mexico to the Kleberg-Nueces county line. [~~that portion of Texas lying within boundaries beginning at the international toll bridge at Brownsville,~~

thence north and east along U.S. Highway 77 to its junction with U.S. Highway 87 at Victoria, thence eastward along U.S. Highway 87 to its junction with Farm Road 616 at Placedo, thence north and east along Farm Road 616 to its junction with State Highway 35, thence north and east along State Highway 35 to its junction with State Highway 6 at Alvin, thence west and north along State Highway 6 to its junction with U.S. Highway 290, thence westward along U.S. Highway 290 to its junction with Interstate Highway 35 at Austin, thence south along Interstate Highway 35 to its junction with U.S. Highway 81 in Laredo, thence southwest along U.S. Highway 81 to the international toll bridge in Laredo, thence south and east along the U.S.-Mexico international boundary to its junction with the U.S. Highway 77 international toll bridge at Brownsville].

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

§65.315. Open Seasons and Bag and Possession Limits–Early Season.

(a) Rails.

(1) Dates: September 15-30, 2000 and October 28 - December 20, 2000[11 -26, 1999, and October 23 - December 15, 1999].

(2) Daily bag and possession limits:

(A) king and clapper rails: 15 in the aggregate per day; 30 in the aggregate in possession.

(B) sora and Virginia rails: 25 in the aggregate per day; 25 in the aggregate in possession.

(b) Dove seasons.

(1) North Zone.

(A) Dates: September 1 - October 30, 2000 [September 1 - October 30, 1999].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(2) Central Zone.

(A) Dates: September 1-October 17, 2000[September 1-October 17, 1999], and December 26, 2000- January 7, 2001[December 26, 1999 - January 7, 2000.]

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(3) South Zone.

(A) Dates: Except in the special white-winged dove area as defined in §65.314 of this title (relating to Zones and Boundaries for Early Season Species), September 22 - November 5, 2000, and December 26, 2000- January 9, 2001[September 24-November 7, 1999, and December 26, 1999-January 9, 2000]. In the special white-winged dove area, the mourning dove season is September 22 - November 5, 2000, and December 26, 2000-January 5, 2001[September 24-November 7, 1999, and December 26, 1999-January 5, 2000].

(B) Daily bag limit: 15 mourning doves, white-winged doves, and white-tipped (white-fronted) doves in the aggregate, including no more than two white-tipped doves per day;

(C) Possession limit: 30 mourning doves, white-winged doves, and white-tipped doves in the aggregate, including no more than four white-tipped doves in possession.

(4) Special white-winged dove area.

(A) Dates: September 2, 3, 9, and 10, 2000[September 4, 5, 11, and 12, 1999].

(B) Daily bag limit: 10 white-winged doves, mourning doves, and white-tipped (white-fronted) doves, in the aggregate to include no more than five mourning doves and two white-tipped doves per day;

(C) Possession limit: 20 white-winged doves, mourning doves, and white-tipped doves in the aggregate to include no more than 10 mourning doves and four white-tipped doves in possession.

(c) Gallinules.

(1) Dates: September 15-30, 2000, and October 28-December 20, 2000[September 11-26, 1999, and October 23, 1999-December 15, 1999].

(2) Daily bag and possession limits: 15 in the aggregate per day; 30 in the aggregate in possession.

(d) September teal-only season.

(1) Dates: September 15-30, 2000[September 11-26, 1999].

(2) Daily bag and possession limits: four in the aggregate per day; eight in the aggregate in possession.

(e) Red-billed pigeons, and band-tailed pigeons. No open season.

(f) Shorebirds. No open season.

(g) Sandhill cranes. A free permit is required of any person to hunt sandhill cranes in areas where an open season is provided under this proclamation. Permits will be issued on an impartial basis with no limitation on the number of permits that may be issued. The daily bag limit is three. The possession limit is six.

(1) Zone A: November 11, 2000- February 11, 2001[November 13, 1999-February 13, 2000].

(2) Zone B: December 2, 2000- February 11, 2001[December 4, 1999-February 13, 2000].

(3) Zone C: January 6 -February 11, 2001[January 8, 1999-February 13, 2000].

(4) The season is closed in the areas specified in §65.314(e)(4) of this title (relating to Zones and Boundaries for Early Season Species).

(h) Woodcock: December 18, 2000- January 31, 2001[December 18, 1999-January 31, 2000]. The daily bag limit is three. The possession limit is six.

(i) Common snipe (Wilson's snipe or jacksnipe): October 21, 2000-February 4, 2001 [October 17, 1999-January 31, 2000]. The daily bag limit is eight. The possession limit is 16.

§65.317. Zones and Boundaries for Late Season Species.

(a) (No change.)

(b) Geese.

(1) Western Zone: that portion of Texas lying west of a line from the international toll bridge at Laredo, thence northward following Interstate Highway 35 to its junction with Interstate Highway 10 in San Antonio thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line [~~that portion of Texas lying west of a line from the international toll bridge at Laredo, thence northward following IH 35 and 35W to Fort Worth, thence northwest along U.S. Highways 81 and 287 to Bowie, thence northward along U.S. Highway 81 to the Texas-Oklahoma state line~~].

(2) Central Zone: that portion of Texas lying within boundaries beginning at the junction of Interstate Highway 35 and the Texas-Oklahoma state line, thence south along Interstate Highway 35 (following Interstate Highway 35 West through Fort Worth) to its junction with Interstate Highway 10 in San Antonio thence northwest along Interstate Highway 10 to its junction with U.S. Highway 83 in Junction, thence north along U.S. Highway 83 to its junction with U.S. Highway 62, 16 miles north of Childress, thence east along U.S. Highway 62 to the Texas-Oklahoma state line, thence eastward along the Texas-Oklahoma state line to Interstate Highway 35.

(3) [~~(2)~~] Eastern Zone: that portion of Texas lying east of a line from the international toll bridge at Laredo, thence northward following IH 35 and 35W to the Texas-Oklahoma state line [~~the remainder of the state~~].

§65.318. Open Seasons and Bag and Possession Limits–Late Season.

Except as specifically provided in this section, the possession limit for all species listed in this section shall be twice the daily bag limit.

(1) Ducks, mergansers, and coots. The daily bag limit for ducks is six, which may include no more than five mallards or Mexican mallards (Mexican duck), only two of which may be hens, three scaup, one mottled duck, one pintail, two redheads, one canvasback, and two wood ducks. The daily bag limit for coots is 15. The daily bag limit for mergansers is five, which may include no more than one hooded merganser.

(A) High Plains Mallard Management Unit: October 21-24, 2000, and October 28, 2000-January 21, 2001 [~~October 23-26, 1999 , and October 30, 1999-January 23, 2000~~].

(B) North Zone: October 28-29, 2000, and November 11, 2000-January 28, 2001 [~~October 30-31, 1999 , and November 13, 1999-January 23, 2000~~].

(C) South Zone: October 28-November 26, 2000, and December 9, 2000-January 28, 2001 [~~October 30-November 28, 1999, and December 11, 1999-January 23, 2000~~].

(2) Geese.

(A) Western Zone.

(i) Light geese: October 21, 2000-February 4, 2001 [~~October 30, 1999-February 13, 2000~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 21, 2000-February 4, 2001 [~~October 30, 1999-February 13, 2000~~]. The daily bag limit for dark geese is five, which may not include more than one white-fronted goose.

(B) Central Zone.

(i) Light geese: October 28, 2000-February 11, 2001. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese: October 28, 2000-February 11, 2001. The daily bag limit for dark geese is five, which may not include more than one white-fronted goose.

(C) [~~(B)~~] Eastern Zone.

(i) Light geese: October 28, 2000-January 21, 2001 [~~October 30, 1999-February 13, 2000~~]. The daily bag limit for light geese is 20, and there is no possession limit.

(ii) Dark geese:

(I) White-fronted geese: October 28, 2000-January 21, 2001 [~~October 30, 1999-January 23, 2000~~]. The daily bag limit for white-fronted geese is two.

(II) Canada geese and brant: October 28, 2000-January 21, 2001 [~~October 30, 1999-February 1, 2000~~]. The daily bag limit is one Canada goose or one brant[~~, except during the period from January 24-February 1, when the bag limit is three in the aggregate~~].

(3) Special Youth-Only Season. There shall be a special youth-only duck season during which the hunting, taking, and possession of ducks, mergansers, and coots is restricted to licensed hunters 15 years of age and younger accompanied by a person 18 years of age or older, except for persons hunting by means of falconry under the provisions of §65.320 of this chapter (relating to Extended Falconry Season–Late Season Species). Bag and possession limits in any given zone during the season established by this paragraph shall be as provided for that zone by paragraph (1) of this section. Season dates are as follows:

(A) High Plains Mallard Management Unit: October 14, 2000 [~~October 16, 1999~~];

(B) North Zone: October 21, 2000 [~~October 23, 1999~~]; and

(C) South Zone: October 21, 2000 [~~October 23, 1999~~].

§65.319. Extended Falconry Season - Early Season Species

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons:

(1) mourning doves and white-winged doves: November 9-December 25, 2000 [~~November 9-December 25, 1999~~]; and

(2) rails and gallinules: December 21, 2000-January 26, 2001[~~December 16, 1999-January 21, 2000~~].

(3) woodcock: November 24-December 17, 2000 and February 1-March 10, 2001 [~~November 24-December 17, 1999, and February 1-March 9, 2000~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds respectively, singly or in the aggregate.

§65.320. Extended Falconry Season - Late Season Species.

(a) It is lawful to take the species of migratory birds listed in this section by means of falconry during the following Extended Falconry Seasons. Ducks, coots, and mergansers:

(1) High Plains Mallard Management Unit: October 14, 2000 [~~October 16, 1999~~]; and

(2) Remainder of the state: October 21, 2000 and January 22-February 6, 2001 [~~October 23, 1999, and January 24 - February 8, 2000~~].

(b) The daily bag and possession limits for migratory game birds under this section shall not exceed three and six birds, respectively, singly or in the aggregate.

§65.321. Special Management Provisions.

The provisions of paragraphs (1)-(3) of this section apply only to the hunting of light geese. All provisions of this subchapter continue in effect unless specifically provided otherwise in this section; however, where this section conflicts with the provisions of this subchapter, this section prevails.

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

(4) Early closures. At sunset on January 21, 2001 [~~31, 1999~~], the open seasons for the following species of migratory birds are closed until further notice.

(A) sandhill crane: statewide [~~in Zones B and C~~];

(B) light geese: in the Western and Eastern Zones [~~Zone~~];

(C) ducks, coots, and mergansers (extended falconry season): statewide; and

(D) woodcock (extended falconry season): statewide.

(5) Special Light Goose Conservation Period.

(A) From January 22, 2001 [~~February 1, 1999~~] through April 1, 2001 [~~25,1999~~], the take of light geese is lawful in the Eastern Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(B) From February 5, 2001 [~~15, 1999~~] through April 1, 2001 [~~25, 1999~~], the take of light geese is lawful in the Western Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

(C) From February 12, 2001 through April 1, 2001 the take of light geese is lawful in the Central Zone as defined in §65.317 of this title (relating to Zones and Boundaries for Late Season Species).

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002722
Gene McCarty
Chief of Staff
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 389-4775

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Part 20. EDWARDS AQUIFER AUTHORITY

Chapter 701. PURPOSE OF RULES; GENERAL PROVISIONS

31 TAC §§701.1, 701.3, 701.5

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

The Edwards Aquifer Authority ("Authority") proposes the repeal of 31 TAC Chapter 701 in its entirety, §§701.1, 701.3 and 701.5, concerning Purpose of Rules; General Provisions. The proposed repeals will merely implement the action of the court by formally repealing 31 TAC Chapter 701 and deleting it from the *Texas Administrative Code*.

On December 17, 1998, the district court in *Living Waters Artesian Springs, LTD. v. Edwards Aquifer Authority*, No. 98-02644 (353rd Judicial District, Travis County, Texas) invalidated 31 TAC Chapter 701 (relating to Purpose of Rules; General Provisions). This proposed repeal is in response to this decision.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC Chapter 701, the proposed repeals can have no independent fiscal effect separate and apart from the pre-existing judicial order.

Mr. Ellis also has determined that for each year of the first five years that the proposed repeals are in effect, the public benefits expected as a result of adoption of the proposed repeals would be the elimination of any confusion that may exist as to the validity and applicability of this chapter which has already been codified in the *Texas Administrative Code*. Additionally, the Authority would be able to reutilize this chapter number in its future rulemaking. In so doing, the public would benefit from cleaning up the public record and result in improved administrative efficiencies. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there are no probable economic costs to persons required to comply with the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 701, the proposed repeals can have no independent effect on economic costs on persons separate and apart from the pre-existing judicial order. Additionally, the repeals do not require persons to comply with its substance because it is a repeal of existing judicially invalidated rules. Thus, there can be no persons who would be regulated by requiring compliance with some provision of the proposed repeal. Likewise, there can be no economic costs to such persons not being subject to regulation by the proposed repeals.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.022, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for the proposed repeals. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there is no effect on local employment on each geographic area affected by the proposed repeals. The basis for this determination is that because the

district court has already invalidated 31 TAC Chapter 701, the proposed repeals can have no independent effect on local employment separate and apart from the pre-existing judicial order.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.0225, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for the proposed repeals. Mr. Ellis has determined that the proposed repeals are not a "major environmental rule" as defined by §2001.0225(g)(3), TEXAS GOVERNMENT CODE. The basis for this determination is that the proposed repeals have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed repeals is to implement a pre-existing judicial decision invalidating the chapter in order to remove administrative confusion because the chapter is still codified in the *Texas Administrative Code* and to free up the chapter numbering for future rulemaking.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is not a covered governmental entity generally subject to §2006.002, TEXAS GOVERNMENT CODE. This basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to the Texas Private Real Property Rights Preservation Act (TPRPRA). TEXAS GOVERNMENT CODE ANNOTATED chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity generally subject to chapter 2007, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for this proposed repeal. Mr. Ellis has determined that the proposed repeals are not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed repeals are an action "reasonably taken to fulfill an obligation mandated by state law," see TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." *Id* §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed repeal. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on the proposed repeals. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas, 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Legislature, Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 701, including specifically §§701.1, 701.3, and 701.5.

§701.1. Purpose of Rules.

§701.3. Construction of Rules.

§701.5. Business Office and Mailing Address of the Authority.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002665
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Chapter 703. DEFINITIONS

31 TAC §703.1

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

The Edwards Aquifer Authority ("Authority") proposes the repeal of 31 TAC Chapter 703 in its entirety, §703.1, concerning Definitions. The proposed repeals will merely implement the action of the court by formally repealing 31 TAC Chapter 701 and deleting it from the *Texas Administrative Code*.

On December 17, 1998, the district court in *Living Waters Artesian Springs, LTD. v. Edwards Aquifer Authority*, No. 98-02644 (353rd Judicial District, Travis County, Texas) invalidated 31 TAC Chapter 703 (relating to Definitions). This proposed repeal is in response to this decision.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 703, the proposed repeals can have no independent fiscal effect separate and apart from the pre-existing judicial order.

Mr. Ellis also has determined that for each year of the first five years that the proposed repeals are in effect, the public benefits expected as a result of adoption of the proposed repeals would be the elimination of any confusion that may exist as to the validity and applicability of this chapter which has already been codified in the *Texas Administrative Code*. Additionally, the Authority would be able to reutilize this chapter number in its future rulemaking. In so doing, the public would benefit from cleaning up the public record and result in improved administrative efficiencies. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there are no probable economic costs to persons required to comply with the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 703, the proposed repeals can have no independent effect on economic costs on persons separate and apart from the pre-existing judicial order. Additionally, the repeals do not require persons to comply with its substance because it is a repeal of existing judicially invalidated rules. Thus, there can be no persons who would be regulated by requiring compliance with some provision of the proposed repeal. Likewise, there can be no economic costs to such persons not being subject to regulation by the proposed repeals.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.022, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for the proposed repeals. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there is no effect on local employment on each geographic area affected by the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 703, the proposed repeals can have no independent effect on local employment separate and apart from the pre-existing judicial order.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.0225, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for the proposed repeals. Mr. Ellis has determined that the proposed repeals are not a "major environmental rule" as defined by §2001.0225(g)(3), TEXAS GOVERNMENT CODE. The basis for this determination is that the proposed repeals have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed repeals is to implement a pre-existing judicial decision invalidating the chapter in order to remove administrative confusion because the chapter is still codified in the *Texas Administrative Code* and to free up the chapter numbering for future rulemaking.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is not a covered governmental entity generally subject to §2006.002, TEXAS GOVERNMENT CODE. This basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to the Texas Private Real Property Rights Preservation Act (TPRPRA). TEXAS GOVERNMENT CODE ANNOTATED chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity generally subject to chapter 2007, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for this proposed repeal. Mr. Ellis has determined that the proposed repeals are not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed repeals are an action "reasonably taken to fulfill an obligation mandated by state law," see TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." *Id* §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed repeal. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P. O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on the proposed repeals. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas

78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Legislature, Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 703, including specifically §703.1.

§703.1. Definitions.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002666
Gregory M. Ellis
General Counsel
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Chapter 703. RULEMAKING PROCEDURES

31 TAC §§703.1, 703.3, 703.5, 703.7, 703.9, 703.11, 703.13, 703.15, 703.17

The Edwards Aquifer Authority ("Authority") proposes the new 31 TAC, Chapter 703, §§703.1, 703.3, 703.5, 703.7, 703.9, 703.11, 703.13, 703.15, and 703.17, relating to the procedures to be employed by the Authority in its rulemaking proceedings.

Proposed §703.1 relates to the applicability of Chapter 703 to the activities of the Authority. This section provides that Chapter 703 applies only to rulemaking by the Authority.

The procedures contained in Chapter 703 do not apply to the adoption of statements, policies, or procedures that are not defined to be rules under the Administrative Procedures Act (APA) (Texas Government Code, §§2001.001-2001.902 (Vernon Supp. 2000)), or otherwise excluded from the coverage of the APA.

Proposed §703.3 relates to compliance with the APA. This section provides that, for its rulemaking, the Authority is to comply with the APA.

Proposed §703.5 relates to advance personal notice of proposed rules. This section provides that the Authority is to maintain a mailing list of persons requesting advance notice of proposed rulemaking by the Authority, and send persons on this list the notice of proposed rules and the proposed rules. It provides that persons may request to be placed on the list by so requesting in writing. The docket clerk of the Authority maintains the list and is to keep the list current by annually requesting persons to state their desire to remain on the list, and eliminating those persons not responding. The proposed rule also provides that failure to provide advance notice does not invalidate any action taken by the Authority to adopt the propose rules.

Proposed §703.7 relates to public hearings on proposed rules. This section provides that public rulemaking hearings are generally not required. However, the board of directors of the Authority may require that hearings be conducted. This section also provides the circumstances when public hearings are required if requested by at least 25 persons, governmental agencies, or associations with at least 25 members. The contents requirements for the request for public hearing are set out. Additionally, the procedures to be used when conducting a public rulemaking hearing are identified.

Proposed §703.9 relates to notices of public hearings on proposed rules. This section provides the procedures for the Authority to use when giving notice of its public rulemaking hearings, if such a hearing is to be conducted.

Proposed §703.11 relates to appearances at public hearings and oral comments. This section provides that persons may appear at public rulemaking hearings and make oral comments on proposed rules of the Authority. The proposed rule identifies the procedures for registering at the public hearings in order to give oral comments and the requirement to specifically identify the proposed rule to which the oral comments may be directed. The authority, responsibilities, and duties of the presiding officer for the hearings are also provided for.

Proposed §703.13 relates to written comments. This section provides that written comments generally should be submitted no later than 30 days after the notice of proposed rule has been published in the Texas Register. These proposed rules identify the editorial and content requirement for the written comments, as well how written comments may be filed with the Authority. Written comments are authorized to be filed either directly at the official offices of the Authority, or by presentation to the presiding office at a public rulemaking hearing, if one is conducted.

Proposed §703.15 relates to petitions for rulemaking. This provides that petitions for rulemaking may be filed with the Authority. The content and filing requirements for rulemaking petitions are established by this proposed rule. Additionally, the proposed rule contains the actions to be taken by the board of directors relative to rulemaking petitions.

Proposed §703.17 relates to informal information gathering by the Authority for its rulemaking activities. This section provides that the board of directors of the Authority may authorize the general manager to establish advisory conferences, consultations, committees, or work groups concerning contemplated rulemaking by the Authority.

Gregory M. Ellis, General Manager of the Authority is responsible for approving the Fiscal Note that was prepared for these proposed rules. Mr. Ellis has determined that for each year of the first five years that the proposed rules will be in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed rules. The basis for this determination is that these proposed rules have no implications for regulatory or compliance obligations that might result in an impact on costs or revenues.

Mr. Ellis is responsible for approving the Public Benefit and Cost Note that was prepared for these proposed rules. Mr. Ellis has determined that for each year of the first five years that the proposed rules will be in effect, the public benefits expected as a result of adoption of the proposed rules would be providing notice to the public of how to interact with the Authority concerning its rulemaking activities. Mr. Ellis has determined that for each year of the first five years that the proposed rules will be in effect, there are no probable economic costs to persons required to comply with the proposed rules. The basis for this determination is that these proposed rules have no implications for regulatory or compliance obligations that might result in an impact on costs or revenues.

Mr. Ellis is responsible for approving the Covered Governmental Agency Determination that was prepared for these proposed rules related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of these proposed rules the Authority is a covered governmental entity and generally subject to Texas Government Code, §2001.022.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for these proposed rules. Mr. Ellis has determined that for each year of the first five years that the proposed rules will be in effect, there is no effect on local employment on any geographic area affected by the proposed rules. The basis for this determination is that these proposed rules have no implications for regulatory or compliance obligations that might result in an effect on local employment. Additionally, the proposed rules merely conform the Authority's rulemaking procedures to pre-existing state law in the APA, they create no new regulatory authority over persons engaged in activities within the jurisdiction of the Authority, provide for due process for the public in the Authority's rulemaking activities, and provides for open and effective public participation in the Authority's rulemaking process. There is nothing in the proposed rules that could impact employment or local economies.

Mr. Ellis is responsible for approving the Covered Governmental Agency Determination that was prepared for these proposed rules related to the Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of these proposed rules the Authority is a covered governmental entity and generally subject to Texas Government Code, §2001.0225.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for these proposed rules. Mr. Ellis has determined that none of the proposed rules are "major environmental rules" as defined by Texas Government Code, §2001.0225(g)(3). The basis for this determination is that the proposed rules have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed rules is to implement the state law mandates of §1.11(a) of the Act and 2001.004(1) of the APA by providing for due process for the public, and open and effective public participation in the Authority's rulemaking process.

Mr. Ellis is responsible for approving the Covered Governmental Agency Determination that was prepared for these proposed rules related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of these proposed rules the Authority is not a covered governmental entity generally subject to Texas Government Code, §2006.002. The basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in Texas Government Code, § 2006.001(3).

Mr. Ellis is responsible for approving the Covered Governmental Agency Determination that was prepared for these proposed rules related to the Texas Private Real Property Rights Preservation Act (TPRPRA), Texas Government Code Ann., Chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of these proposed rules the Authority is a covered governmental entity generally subject to Texas Government Code, Chapter 2007.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for these proposed rules. Mr. Ellis has determined that proposing and adopting the proposed rules is not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed rules is an action "reasonably taken to fulfill an obligation mandated by state law," see Texas Government Code Annotated, §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." Id §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed rules. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North St. Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the Texas Register. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on these proposed rules. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the Texas Register. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

The new sections are proposed pursuant to §§1.11(a) and (h) of the Edwards Aquifer Authority Act (Act of May 30, 1993, 73rd Legislature, Regular Session, Chapter 626, 1993 Texas General Laws 2350, 2358-59, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, Chapter 261, 1995 Texas General

Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, Chapter 163, 1999 Texas General Laws 634 ("Act"); and §§2001.004(1), 2001.021(b), 2001.026, 2001.029, and 2001.031 of the APA.

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (Article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including in particular, administrative procedures to be used before the Authority. The procedures of the board and the Authority readily encompass the procedures of the Authority to be employed when the Authority is engaging in rulemaking and are proposed in furtherance of this legislative mandate.

Section 1.11(h) of the Act provides, among other things, that the Authority is "subject to" the APA. This section essentially provides that the Authority is required to comply with the APA for its rulemaking, even though the Authority is a political subdivision and not a state agency that would generally be subject to APA requirements.

Section 2001.004(1) of the APA requires agencies subject to the APA to "adopt rules of practice stating the nature and requirements of all available formal and informal procedures." These proposed rulemaking is in furtherance of this legislative mandate. These proposed rules are rules of practice that state the procedures available to the public and the Authority for rulemaking.

Section 2001.021(b) of the APA authorizes interested persons to petition agencies for the adoption of a rule. These propose rules implement this section of the APA.

Section 2001.026 of the APA requires agencies to provide notice of proposed rules to persons requesting such notice. These proposed rules implement this section of the APA.

Section 2001.029 of the APA authorizes public comment on proposed rules. These proposed rules implement this section of the APA.

Section 2001.031 of the APA provides for agencies contemplating rulemaking to use advisory conferences and committees. These proposed rules implement this section of the APA.

The statutes, articles, or sections of the Act or any other code that are affected by the proposed rule are §§1.11(a) and (h) of the Act, §§2001.004(1), 2001.021(b), 2001.026, 2001.029, and 2001.031 of the APA. The sections of 31 TAC, that would be affected are §§703.1, 703.3, 703.5, 703.7, 703.9, 703.11, 703.13, 703.15, and 703.17.

§703.1. Applicability.

(a) This chapter applies to rulemaking by the authority.

(b) This chapter does not apply to the following statements of the authority:

(1) internal personnel rules and practices;

(2) statements not of general applicability;

(3) statements not implementing, interpreting, or prescribing law or policy; or describing procedure or practice requirements; and

(4) statements regarding internal management or organization that do not affect private rights or procedures.

§703.3. Compliance with the Administrative Procedure Act (APA).

The authority shall follow Administrative Procedure Act (APA) rulemaking requirements.

§703.5. Advance Personal Notice of Proposed Rules.

(a) Persons may request in writing that they receive from the authority advance notice of proposed rules of the authority.

(b) The docket clerk shall maintain a mailing list of persons requesting advance notice of proposed rules. At the end of each year, the docket clerk will, by regular mail, notify all persons included on the list of the requirement to affirmatively express a desire to continue receiving advance notice of proposed rules. The docket clerk shall eliminate from the list those persons who do not respond within 30 days of the date the docket clerk's notification was mailed.

(c) When the general manager files the notice of proposed rules with the secretary of state, the general manager shall also send advance personal notice of proposed rules by regular mail to each person on the list.

(d) Failure to provide advance notice of proposed rules under this section does not invalidate any action taken or rule adopted by the authority.

§703.7. Public Hearings on Proposed Rules.

(a) The board may direct the general manager to conduct public hearings on proposed rules of the authority.

(b) The general manager shall conduct a public hearing on proposed rules before the board adopts them as substantive rules if a public hearing is requested by:

(1) at least 25 persons;

(2) a governmental subdivision or agency; or

(3) an association having at least 25 members.

(c) Any person, governmental subdivision, governmental agency, or association may request a public hearing on proposed rules of the authority. Requests for public hearings are to be filed with the docket clerk at the official address of the authority. A separate request must be made for each notice of proposed rules that may be issued by the authority. A request for public hearing must be made no later than 30 days after the date the notice of proposed rule is published in the *Texas Register*, unless the board establishes a later date for accepting requests for public hearings. Requests for a public hearing must contain:

(1) the name, address, and telephone number of the requestor;

(2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and

(3) a description of the proposed rules.

(d) Public hearings will be conducted in the manner the general manager deems most suitable to conveniently, inexpensively and expeditiously provide a reasonable opportunity for interested persons to submit relevant data, views, or arguments, in writing or orally, on proposed rules.

(e) The general manager may designate a person to be the presiding officer of a public hearing.

(f) Public hearings on proposed rules may be tape recorded.

§703.9. Notice of Public Hearings on Proposed Rules.

(a) The general manager will set a time and place for any public hearing on proposed rules of the authority.

(b) The docket clerk shall give at least 30 days prior notice of the date and time for a public hearing before the public hearing is convened.

(c) The notice shall advise the public of the following:

(1) the date, place, and time the public hearing is to be convened;

(2) a statement of the opportunity to file written comments;

(3) the date and time by which written comments must be filed with the authority;

(4) the place at which written comments must be filed with the authority;

(5) the format and style requirements for written comments; and

(6) a statement of the opportunity to appear and provide oral comments to the authority at the public hearing.

(d) The notice of public hearing shall be published one time at least 30 days prior to the date of the public hearing in the following:

(1) one newspaper with general circulation throughout the jurisdictional boundaries of the authority; and

(2) at least four other newspapers with circulation within all or any portion of the jurisdictional boundaries of the authority.

§703.11. Appearances at Public Hearings; Oral Comments.

(a) Any person may appear in person, or by authorized representative, at a public hearing on proposed rules of the authority. Any person making an appearance must indicate desire to make oral comments on the proposed rules on the registration form provided by the authority at the public hearing. A person must disclose any affiliation on the registration form and, if applicable, the legal authority to speak for a person represented. Any other person attending the public hearing will be considered by the authority to be an observer not desiring to make comment on the proposed rules. The authority will not consider any comments of an observer in its rulemaking proceedings.

(b) All persons must indicate on the registration form whether their comments are generally directed to all of the proposed rules or whether they are directed at specific numbered rules. If directed at specific rules, the number of the proposed rules must be identified on the registration form. If it becomes apparent during the oral comments that what were indicated to be merely general comments are, in fact, specific comments, the presiding officer may ask the person to specifically identify the proposed rules to which the oral comments are directed.

(c) The presiding officer will establish the order of oral comments of persons at the hearing.

(d) As appropriate, the presiding officer may limit:

(1) the number of times a person may speak;

(2) the time period for oral comments;

(3) cumulative, irrelevant, or unduly repetitious comments;

(4) general comments that are so vague, undeveloped, or immaterial as to be impracticable for the authority to ascertain the intent or purpose of the person making the general oral comments and that are otherwise unhelpful to the authority in analyzing its proposed rules;

(5) the time period for asking or responding to questions; and

(6) other matters that come to the attention of the presiding officer as requiring limitation.

§703.13. Written Comments.

(a) Unless the board in the notice of proposed rule establishes a later date, written comments on proposed rules must be filed with the authority no later than 30 days after the notice of proposed rule is published in the Texas Register, or prior to the adjournment of the last public hearing on the proposed rules, if any, whichever is later. Written comments must be filed at the official address of the authority or, if a hearing is conducted, hand delivered to the presiding officer of the public hearing. The board may grant additional time for filing written comments as it finds appropriate.

(b) Written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are general and directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific rules, the number of the proposed rule must be identified and followed by the comments on the specifically identified proposed rule.

§703.15. Petition for Rulemaking.

(a) Any interested person may petition the authority and request the board to adopt a new rule or amend an existing rule. Each rule requested must be by separate petition. After review, the general manager may request additional information from the petitioner to clarify the contents of the petition.

(b) Petitions for rulemaking must contain the following information:

(1) the name, address, and telephone number of the petitioner;

(2) any person, if any, the petitioner is representing;

(3) brief explanation of the proposed rule;

(4) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the text of a current rule;

(5) a statement of the statutory or other authority under which the proposed rule would be promulgated;

(6) a concise statement of the proposed rule's factual basis;

(7) a concise statement of any facts demonstrating:

(A) the injury to petitioner occasioned by the current rules, if any; and

(B) the injury to petitioner that could result upon failure to adopt the proposed rule.

(c) Rulemaking petitions are to be filed with the docket clerk at the official address of the authority.

(d) Not later than 60 days after the date of submission of a petition for rulemaking, the board shall consider the petition at a meeting and either deny the petition in writing, stating its reasons for

the denial, or initiate rulemaking proceedings in accordance with the APA.

(e) A petition may be denied for failure to comply with the requirement of subsection (b) of this section.

§703.17. Informal Information Gathering.

(a) Before filing with the secretary of state a notice of proposed rules, the board may authorize the general manager to:

(1) convene informal conferences or consultations to obtain the opinions and advice of interested persons about contemplated rulemaking; or

(2) appoint an advisory committee or work group of experts, interested persons, representatives of the public, or employees or consultants of the authority to advise the authority about contemplated rulemaking.

(b) The powers of such conferences, consultations, or committees shall be advisory only.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002693
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Chapter 705. SUBSTANTIVE GROUNDWATER WITHDRAWAL PERMIT RULES

The Edwards Aquifer Authority ("Authority") proposes the repeal of 31 TAC Chapter 705 in its entirety, §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267, concerning Substantive Groundwater Withdrawal Permit Rules. The proposed repeals will merely implement the action of the court by formally repealing 31 TAC Chapter 701 and deleting it from the *Texas Administrative Code*.

On December 17, 1998, the district court in *Living Waters Artesian Springs, LTD. v. Edwards Aquifer Authority*, No. 98-02644 (353rd Judicial District, Travis County, Texas) invalidated 31 TAC Chapter 705 (relating to Substantive Groundwater Withdrawal Permit Rules). This proposed repeal is in response to this decision.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 705, the proposed repeals can have no independent fiscal effect separate and apart from the pre-existing judicial order.

Mr. Ellis also has determined that for each year of the first five years that the proposed repeals are in effect, the public benefits expected as a result of adoption of the proposed repeals would be the elimination of any confusion that may exist as to the validity and applicability of this chapter which has already been codified in the *Texas Administrative Code*. Additionally, the Authority would be able to reutilize this chapter number in its future rulemaking. In so doing, the public would benefit from cleaning up the public record and result in improved administrative efficiencies. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there are no probable economic costs to persons required to comply with the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 705, the proposed repeals can have no independent effect on economic costs on persons separate and apart from the pre-existing judicial order. Additionally, the repeals do not require persons to comply with its substance because it is a repeal of existing judicially invalidated rules. Thus, there can be no persons who would be regulated by requiring compliance with some provision of the proposed repeal. Likewise, there can be no economic costs to such persons not being subject to regulation by the proposed repeals.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.022, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for the proposed repeals. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there is no effect on local employment on each geographic area affected by the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 705, the proposed repeals can have no independent effect on local employment separate and apart from the pre-existing judicial order.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.0225, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for the proposed repeals. Mr. Ellis has determined that the proposed repeals are not a "major environmental rule" as defined by §2001.0225(g)(3), TEXAS GOVERNMENT CODE. The basis for this determination is that the proposed repeals have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed repeals is to implement a pre-existing judicial decision invalidating the chapter in order to remove administrative confusion because the chapter is still codified in the *Texas Administrative Code* and to free up the chapter numbering for future rulemaking.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals

related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is not a covered governmental entity generally subject to §2006.002, TEXAS GOVERNMENT CODE. This basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to the Texas Private Real Property Rights Preservation Act (TPRPRA). TEXAS GOVERNMENT CODE ANNOTATED chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity generally subject to chapter 2007, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for this proposed repeal. Mr. Ellis has determined that the proposed repeals are not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed repeals are an action "reasonably taken to fulfill an obligation mandated by state law," see TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." *Id* §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed repeal. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P. O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on the proposed repeals. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P. O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

Subchapter A. PURPOSE OF PERMIT PROGRAM

31 TAC §705.1

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.1. Purpose.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002667
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Subchapter B. GROUNDWATER WITHDRAWALS NOT REQUIRING A PERMIT; EXEMPT WELLS

31 TAC §§705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.11. Withdrawals Not Requiring a Groundwater Withdrawal Permit.

§705.15. Provisions Not Applicable to Exempt Wells.

§705.17. Withdrawal Conditions for Wells Not Requiring a Groundwater Withdrawal Permit.

§705.19. Subsequent Creation of Subdivisions; Vacation or Cancellation of Subdivisions; Exempt Well Status.

§705.21. Loss of Exempt Well Status.

§705.23. Conversion of a Well from Permitted to Exempt Well Status.

§705.25. Dual Status Wells.

§705.27. Exempt Wells Ineligible for Permitted or Interim Authorization Status.

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

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Subchapter C. ACTIVITIES REQUIRING A PERMIT

31 TAC §705.41

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.41. Activities Requiring a Permit

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (512) 222-2204

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Subchapter D. AUTHORIZED USES

31 TAC §705.51

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to

implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.51. Authorized Uses.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (512) 222-2204

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Subchapter E. PERMIT CATEGORIES

31 TAC §§705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.61. Permit Categories.

§705.63. Contents of Groundwater Withdrawal Permits.

§705.65. Contents of Well Construction Permits.

§705.67. Initial Regular Permits.

§705.69. Additional Regular Permits .

§705.71. Term Permits.

§705.73. Emergency Permits.

§705.75. Well Construction Permits.

§705.77. Proportional Adjustment of Initial Regular Permits.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002671
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (512) 222-2204

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Subchapter F. STANDARD GROUNDWATER WITHDRAWAL PERMIT CONDITIONS

31 TAC §705.101

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.101. Standard Groundwater Withdrawal Permit Conditions.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Subchapter G. REPORTING

31 TAC §705.111, §705.113

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.111. Annual Water Use Reports.

§705.113. Water Well Drillers Logs.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002673
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Subchapter I. GENERAL PROHIBITIONS

31 TAC §§705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.221. Anti-Exportation Outside Authority Boundaries.

§705.225. Withdrawals from New Wells.

§705.227. Permit Requirement.

§705.229. Registration Requirement.

§705.231. Compliance with Permit.

§705.233. Compliance with the Edwards Aquifer Act(Act).

§705.235. Compliance with Rules.

§705.237. Waste Prevention.
§705.239. Pollution of the Aquifer.
§705.241. Unauthorized Production Rates.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Subchapter J. INTERIM AUTHORIZATION

31 TAC §§705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265, 705.267

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 705, including specifically §§705.1, 705.11, 705.15, 705.17, 705.19, 705.21, 705.23, 705.25, 705.27, 705.41, 705.51, 705.61, 705.63, 705.65, 705.67, 705.69, 705.71, 705.73, 705.75, 705.77, 705.101, 705.111, 705.113, 705.221, 705.225, 705.227, 705.229, 705.231, 705.233, 705.235, 705.237, 705.239, 705.241, 705.251, 705.253, 705.255, 705.257, 705.259, 705.261, 705.263, 705.265 and 705.267.

§705.251. Eligibility for Interim Authorization Status.
§705.253. Effect of Interim Authorization Status.
§705.255. Period of Interim Authorization.
§705.257. Groundwater Withdrawal Amounts During Interim Authorization.
§705.259. Adjustment of Aggregate Total of Interim Authorization Withdrawal Amounts.
§705.261. Interim Authorization Groundwater Withdrawal Conditions.
§705.263. Reports.
§705.265. Fees.
§705.267. Amendments.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002675
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 222-2204

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Chapter 707. PROCEDURAL GROUNDWATER WITHDRAWAL PERMIT RULES

The Edwards Aquifer Authority ("Authority") proposes the repeal of 31 TAC Chapter 707 in its entirety, §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723, concerning Procedural Groundwater Withdrawal Permit Rules. The proposed repeals will merely implement the action of the court by formally repealing 31 TAC Chapter 707 and deleting it from the *Texas Administrative Code*.

On December 17, 1998, the district court in *Living Waters Artesian Springs, LTD. v. Edwards Aquifer Authority*, No. 98-02644 (353rd Judicial District, Travis County, Texas) invalidated 31 TAC Chapter 707 (relating to Procedural Groundwater Withdrawal Permit Rules). This proposed repeal is in response to this decision.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 707, the proposed repeals can have no independent fiscal effect separate and apart from the pre-existing judicial order.

Mr. Ellis also has determined that for each year of the first five years that the proposed repeals are in effect, the public benefits expected as a result of adoption of the proposed

repeals would be the elimination of any confusion that may exist as to the validity and applicability of this chapter which has already been codified in the *Texas Administrative Code*. Additionally, the Authority would be able to reutilize this chapter number in its future rulemaking. In so doing, the public would benefit from cleaning up the public record and result in improved administrative efficiencies. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there are no probable economic costs to persons required to comply with the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 707, the proposed repeals can have no independent effect on economic costs on persons separate and apart from the pre-existing judicial order. Additionally, the repeals do not require persons to comply with its substance because it is a repeal of existing judicially invalidated rules. Thus, there can be no persons who would be regulated by requiring compliance with some provision of the proposed repeal. Likewise, there can be no economic costs to such persons not being subject to regulation by the proposed repeals.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.022, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for the proposed repeals. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there is no effect on local employment on each geographic area affected by the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC 707, the proposed repeals can have no independent effect on local employment separate and apart from the pre-existing judicial order.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.0225, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for the proposed repeals. Mr. Ellis has determined that the proposed repeals are not a "major environmental rule" as defined by §2001.0225(g)(3), TEXAS GOVERNMENT CODE. The basis for this determination is that the proposed repeals have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed repeals is to implement a pre-existing judicial decision invalidating the chapter in order to remove administrative confusion because the chapter is still codified in the *Texas Administrative Code* and to free up the chapter numbering for future rulemaking.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is not a covered governmental entity generally subject to §2006.002, TEXAS GOVERNMENT CODE. This basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to the Texas Private Real Property Rights Preservation Act (TPRPRA). TEXAS GOVERNMENT CODE ANNOTATED chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity generally subject to chapter 2007, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for this proposed repeal. Mr. Ellis has determined that the proposed repeals are not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed repeals are an action "reasonably taken to fulfill an obligation mandated by state law," see TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." *Id* §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed repeal. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P. O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on the proposed repeals. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P. O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

Subchapter A. JURISDICTION OF THE EDWARDS AQUIFER AUTHORITY

31 TAC §707.1, §707.3

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th

Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.1. Permit Program Administration.

§707.3. Permit Decision-Making Authority.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002676
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter B. GENERAL REQUIREMENTS

31 TAC §§707.21, 707.23, 707.25, 707.27, 707.29, 707.31

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.21. Computation of Time.

§707.23. Initiation of Proceeding.

§707.25. Docket Clerk.

§707.27. Document Filing Procedures.

§707.29. Service of Documents.

§707.31. Change of Address or Telephone Number.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002677
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter C. REQUIREMENTS FOR ALL APPLICATIONS

31 TAC §§707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular

Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.41. Requirement To File an Application.

§707.43. Use of Forms.

§707.45. Preparation of Application.

§707.47. Name and Address.

§707.49. Source of Supply.

§707.51. Amount and Purpose of Withdrawal and Use.

§707.53. Rate and Method of Withdrawal.

§707.57. Signature of Applicant.

§707.59. Sworn Application Required.

§707.61. Filing of Applications.

§707.63. Application Fees Required.

§707.65. Copies.

§707.67. Right To Supplement.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002678
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter D. DECLARATIONS OF HISTORICAL USE

31 TAC §§707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.81. Applicability.

§707.83. Requirement To File Declaration.

§707.85. Proper Declarants.

§707.87. Time and Place for Filing.

§707.89. Declarations Received before March 1, 1998.

§707.91. Contents.

§707.93. Exception for Exempt Wells.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter F. ADDITIONAL REQUIREMENTS FOR ADDITIONAL REGULAR PERMITS

31 TAC §707.121

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.121. No Action on Applications.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002680
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter G. ADDITIONAL REQUIREMENTS FOR TERM PERMITS

31 TAC §707.131, §707.133

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.131. Additional Contents of Application.

§707.133. Application To Renew.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Subchapter H. ADDITIONAL REQUIREMENTS FOR EMERGENCY PERMITS

31 TAC §707.151, §707.153

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.151. Additional Contents of Application.

§707.153. Applications To Renew.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Subchapter I. ADDITIONAL REQUIREMENTS FOR WELL CONSTRUCTION PERMITS

31 TAC §707.161

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.161. Additional Contents of Application.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Subchapter K. REGISTRATION OF WELLS

31 TAC §§707.201, 707.205, 707.207, 707.209

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.201. Requirement To Register.

§707.205. Time for Filing Registrations.

§707.207. Contents of Registration.

§707.209. Registration Fees 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.

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Subchapter L. APPLICATIONS PROCESSING

31 TAC §§707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

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§707.221. Purpose.

§707.223. Initial Review.

§707.225. Applications Returned.

§707.227. Technical Review.

§707.229. Extension.

§707.231. Proposed Regular Permit and Technical Summary.

§707.233. Referral to Docket Clerk.

§707.235. Application Amendment.

§707.237. Supplementation of Application.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter M. NOTICES RELATED TO GROUNDWATER WITHDRAWAL PERMIT APPLICATIONS

31 TAC §§707.251, 707.257, 707.259, 707.261, 707.263

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

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No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.251. Notice of Receipt of Application and Determination of Administrative Completeness.

§707.257. Applications Not Requiring Notice.

§707.259. Notice of Hearing Before the Board.

§707.261. Notice of Proposed Regular Permit and Technical Summary.

§707.263. Notice of Contested Case Hearing.

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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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter N. ACTIONS ON APPLICATIONS

31 TAC §§707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57,

707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.281. Applicability.

§707.283. Action by the Board Without a Contested Case Hearing.

§707.285. Issuance of Initial Regular Permits.

§707.287. Board Actions.

§707.289. Actions by General Manager.

§707.291. Actions by General Manager on Registrations.

§707.293. Effective Date of General Manager's Actions.

§707.295. Motion for Reconsideration of Actions Taken by General Manager.

§707.297. Issuance of Well Construction Permits.

§707.299. Emergency Permits.

§707.301. Review of General Manager's Actions.

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

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Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Subchapter O. REQUESTS FOR CONTESTED CASE HEARINGS

31 TAC §§707.311, 707.313, 707.315, 707.317, 707.319

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.311. Applicability.

§707.313. Requests for Contested Case Hearings.

§707.315. Hearing Request Processing.

§707.317. Action on Hearing Request.

§707.319. Determination of Reasonableness of Hearing Request.

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

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TRD-200002688
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Subchapter P. CONTESTED CASE HEARINGS

Division 1. GENERAL PROVISIONS

31 TAC §§707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th

Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.401. Applicability and Purpose.

§707.403. Delegation to SOAH.

§707.405. Referral to SOAH.

§707.417. Burden of Proof.

§707.425. Withdrawing the Application.

§707.429. Motions.

§707.431. Lost Records and Papers.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002689
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
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For further information, please call: (210) 222-2204

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Division 2. HEARING PROCEDURES

31 TAC §§707.501, 707.509, 707.525

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.501. Remand to Board.

§707.509. Designation of Parties.

§707.525. Interlocutory Appeals and Certified Questions.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002690
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Division 3. POST-HEARING PROCEDURES

31 TAC §§707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721, 707.723

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

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Leg., Regular

Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 707, including specifically §§707.1, 707.3, 707.21, 707.23, 707.25, 707.27, 707.29, 707.31, 707.41, 707.43, 707.45, 707.47, 707.49, 707.51, 707.53, 707.57, 707.59, 707.61, 707.63, 707.65, 707.67, 707.81, 707.83, 707.85, 707.87, 707.89, 707.91, 707.93, 707.121, 707.131, 707.133, 707.151, 707.153, 707.161, 707.201, 707.205, 707.207, 707.209, 707.221, 707.223, 707.225, 707.227, 707.229, 707.231, 707.233, 707.235, 707.237, 707.251, 707.257, 707.259, 707.261, 707.263, 707.281, 707.283, 707.285, 707.287, 707.289, 707.291, 707.293, 707.295, 707.297, 707.299, 707.301, 707.311, 707.313, 707.315, 707.317, 707.319, 707.401, 707.403, 707.405, 707.417, 707.425, 707.429, 707.431, 707.501, 707.509, 707.525, 707.703, 707.705, 707.709, 707.711, 707.713, 707.715, 707.717, 707.719, 707.721 and 707.723.

§707.703. Waiver of Right To Review Judge's Proposal.
§707.705. Pleadings Following Proposal for Decision.
§707.709. Scheduling Board Meeting.
§707.711. Oral Presentation Before the Board.
§707.713. Reopening the Record.
§707.715. Decision.
§707.717. Motion for Rehearing.
§707.719. Decision Final and Appealable.
§707.721. Appeal of Final Decision.
§707.723. Costs of Record on Appeal.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002691
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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Chapter 709. CRITICAL PERIOD MANAGEMENT RULES

31 TAC §§709.1, 709.3, 709.5, 709.7, 709.9, 709.11, 709.13, 709.15, 709.17, 709.19, 709.21, 709.23, 709.25, 709.27, 709.29, 709.31, 709.33, 709.35, 709.37, 709.39, 709.41, 709.43, 709.45

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

The Edwards Aquifer Authority ("Authority") proposes the repeal of 31 TAC Chapter 709 in its entirety, §§709.1, 709.3, 709.5, 709.7, 709.9, 709.11, 709.13, 709.15, 709.17, 709.19, 709.21, 709.23, 709.25, 709.27, 709.29, 709.31, 709.33, 709.35, 709.37, 709.39, 709.41, 709.43 and 709.45, concerning Critical Period Management Rules. The proposed repeals will merely implement the action of the court by formally repealing 31 TAC Chapter 709 and deleting it from the *Texas Administrative Code*.

On December 17, 1998, the district court in *Living Waters Artesian Springs, LTD. v. Edwards Aquifer Authority*, No. 98-02644 (353rd Judicial District, Travis County, Texas) invalidated 31 TAC Chapter 709 (relating to Critical Period Management Rules). This proposed repeal is in response to this decision.

Gregory M. Ellis, General Manager, Edwards Aquifer Authority, has determined that for each year of the first five years that the proposed repeals are in effect, there will be no: (1) additional costs; (2) reduction in costs; (3) loss in revenues; or (4) increase in revenues, to state or local governments expected as a result of enforcing or administering the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC Chapter 709, the proposed repeals can have no independent fiscal effect separate and apart from the pre-existing judicial order.

Mr. Ellis also has determined that for each year of the first five years that the proposed repeals are in effect, the public benefits expected as a result of adoption of the proposed repeals would be the elimination of any confusion that may exist as to the validity and applicability of this chapter which has already been codified in the *Texas Administrative Code*. Additionally, the Authority would be able to reutilize this chapter number in its future rulemaking. In so doing, the public would benefit from cleaning up the public record and result in improved administrative efficiencies. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there are no probable economic costs to persons required to comply with the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC Chapter 709, the proposed repeals can have no independent effect on economic costs on persons separate and apart from the pre-existing judicial order. Additionally, the repeals do not require persons to comply with its substance because it is a repeal of existing judicially invalidated rules. Thus, there can be no persons who would be regulated by requiring compliance with some provision of the proposed repeal. Likewise, there can be no economic costs to such persons not being subject to regulation by the proposed repeals.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Local Employment Impact Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.022, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Effect on Local Economies that was prepared for the proposed repeals. Mr. Ellis has determined that for each year of the first five years that the proposed repeals are in effect, there is no effect on local employment on each geographic area affected by the proposed repeals. The basis for this determination is that because the district court has already invalidated 31 TAC Chapter 709, the proposed repeals can have no independent effect on local employment separate and apart from the pre-existing judicial order.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Regulatory Impact Analysis of Major Environmental Rules. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity and generally subject to §2001.0225, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Finding of No Major Environmental Rules that was prepared for the proposed repeals. Mr. Ellis has determined that the proposed repeals are not a "major environmental rule" as defined by §2001.0225(g)(3), TEXAS GOVERNMENT CODE. The basis for this determination is that the proposed repeals have no specific intent to protect the environment or reduce risks to human health from environmental exposure. The specific intent of the proposed repeals is to implement a pre-existing judicial decision invalidating the chapter in order to remove administrative confusion because the chapter is still codified in the *Texas Administrative Code* and to free up the chapter numbering for future rulemaking.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to Small Business Effects Statements. Mr. Ellis has determined that for purpose of the proposed repeals the Authority is not a covered governmental entity generally subject to §2006.002, TEXAS GOVERNMENT CODE. This basis for this determination is that the Act does not generally make the Authority subject to Chapter 2006, and the Authority is not a "state agency" as that term is defined in §2006.001(3), TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Entity Determination that was prepared for the proposed repeals related to the Texas Private Real Property Rights Preservation Act (TPRPRA). TEXAS GOVERNMENT CODE ANNOTATED chapter 2007 (Vernon Supp. 2000). Mr. Ellis has determined that for purpose of the proposed repeals the Authority is a covered governmental entity generally subject to chapter 2007, TEXAS GOVERNMENT CODE.

Mr. Ellis is responsible for approving the Covered Governmental Action Determination that was prepared for this proposed repeal. Mr. Ellis has determined that the proposed repeals are not a covered governmental action for which the Authority is required to comply with TPRPRA. The basis for this determination is that the proposed repeals are an action "reasonably taken to fulfill an obligation mandated by state law," see TEXAS GOVERNMENT CODE ANNOTATED §2007.003(b)(4), and is an action taken "under the (Authority's) statutory authority to prevent waste or protect right of owners of interest in groundwater." *Id* §2007.003(b)(11)(C).

Interested persons may submit written comments on the proposed repeal. Comments must be submitted in writing to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas, 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The written comments should be filed on 8 1/2 x 11 inch paper and be typed or legibly written. Written comments must indicate whether the comments are generally directed at all of the proposed rules, or whether they are directed at specific proposed rules. If directed at specific proposed rules, the number of the proposed rule must be identified and followed by the comments thereon.

The Authority has not scheduled public hearings on the proposed repeals. A request for a hearing must be submitted to Brenda Davis, Docket Clerk, Edwards Aquifer Authority, P.O. Box 15830,1615 North Saint Mary's Street, San Antonio, Texas, 78212-9030, within 30 days of the publication of this notice in the *Texas Register*. The request for a public hearing must contain: (1) the name, address, and telephone number of the requestor; (2) if the requestor is an association, a duly executed resolution certifying that the association has at least 25 members; and (3) a description of the proposed rules.

The repeals are proposed under §1.11(a), of the Edwards Aquifer Authority Act. Act of May 30, 1993, 73rd Legislature, Regular Session, chapter 626, 1993 Texas General Laws 2350, as amended by Act of May 29, 1995, 74th Legislature, Regular Session, chapter 261, 1995 Texas General Laws 2505, Act of May 16, 1995, 74th Legislature, Regular Session, chapter 524, 1995 Texas General Laws 3280, and Act of May 6, 1999, 76th Legislature, Regular Session, chapter 163, 1999 Texas General Laws 634 ("Act").

Section 1.11(a) of the Act provides that the Board of Directors ("Board") of the Authority "shall adopt rules necessary to carry out the authority's powers and duties under (article 1 of the Act), including rule governing procedures of the board and the authority." This section provides broad rulemaking authority to implement the various substantive and procedures programs set forth in the Act related to the Edwards Aquifer, including, among other things, administrative procedures to be used before the Authority, groundwater withdrawal permits, water quality protection, the development of a comprehensive water management plan, and the enforcement of the Act.

No other statute, article, or section of the Act or any other code are affected by the proposed repeals, other than the repeal of 31 TAC Chapter 709, including specifically §§709.1, 709.3, 709.5, 709.7, 709.9, 709.11, 709.13, 709.15, 709.17, 709.19, 709.21, 709.23, 709.25, 709.27, 709.29, 709.31, 709.33, 709.35, 709.37, 709.39, 709.41, 709.43 and 709.45.

§709.1. Applicability.

§709.3. Nondiscretionary Uses.

§709.5. Critical Period Stages–East Area.

§709.7. Critical Period Stages–Medina Area.

§709.9. Critical Period Stages–Uvalde Area.

§709.11. Beginning and End of Critical Period Stages.

§709.13. Enforcement.

§709.15. Determination of Base Withdrawals and Maximum Allowable Withdrawals.

§709.17. Reduction Efforts for Discretionary Uses.

§709.19. Stage I Restrictions.

§709.21. Stage II Restrictions.

§709.23. Stage III Restrictions.

§709.25. Stage IV Restrictions.

§709.27. Stage V Restrictions.

§709.29. Golf Courses.

§709.31. Athletic Fields.

§709.33. Base Withdrawal Reports.

§709.35. Monthly Withdrawal Reports.

§709.37. Variance Applications.

§709.39. Granting of Variances.

§709.41. Variance Conditions.

§709.43. Rescission of Variance.

§709.45. Review of General Manager's Actions.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002692
Gregory M. Ellis
General Manager
Edwards Aquifer Authority
Earliest possible date of adoption: May 28, 2000
For further information, please call: (210) 222-2204

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 9. TEXAS COMMISSION ON JAIL STANDARDS

Chapter 263. LIFE SAFETY RULES

Subchapter C. DETECTION AND ALARM SYSTEMS

37 TAC §263.31

The Texas Commission on Jail Standards proposes an amendment to §263.31 concerning Life Safety to clarify existing standards regarding smoke detection testing criterion.

Jack E. Crump, 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 sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§263.31. Smoke Detection.

Fire detection for inmate occupied areas shall be by means of listed and labeled smoke detectors. The detectors shall be so located to meet the smoke detection testing criterion of §263.51(f) [~~§263.52(f)~~] of this title (relating to Smoke Management).

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002623
Jack E. Crump
Executive Director
Commission on Jail Standards
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-5505

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Subchapter G. SUBMISSION WITH ARCHITECTURAL PLANS

37 TAC §263.90

The Texas Commission on Jail Standards proposes an amendment to §263.90 concerning Life Safety to clarify existing standards regarding required submissions.

Jack E. Crump, 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 sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be clarification of existing standards.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§263.90. Submission.

Drawings of adequate detail indicating all life safety and emergency equipment and the proposed function thereof shall be submitted with new construction or renovation plans in accordance with §257.4 [~~§257.3~~] of this title (relating to Required [~~Information~~] Submissions).

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002624
Jack E. Crump
Executive Director
Commission on Jail Standards
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-5505

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Chapter 277. CLOTHING, PERSONAL HYGIENE AND BEDDING

37 TAC §277.1

The Texas Commission on Jail Standards proposes an amendment to §277.1 concerning Clothing, Personal Hygiene, and Bedding to ensure all inmates held over 48 hours will be issued standard facility clothing.

Jack E. Crump, 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 sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure inmates are provided clothing within 48 hours.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§277.1. Inmate Clothing.

Standard facility clothing shall be issued to all inmates held over 48 [~~72~~] hours. Additional appropriate clothing shall be issued to inmates participating in outside activities during inclement weather.

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002625
Jack E. Crump
Executive Director
Commission on Jail Standards
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-5505

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37 TAC §277.4

The Texas Commission on Jail Standards proposes an amendment to §277.4 concerning Clothing, Personal Hygiene, and Bedding to ensure indigent inmates held over 48 hours are issued personal care items.

Jack E. Crump, 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 sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to provide minimum standards that ensure indigent inmates held over 48 hours receive personal hygiene items.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§277.4. Personal Hygiene.

Inmates held over 48 [~~72~~] hours who are unable to supply themselves with personal care items, because of indigency, shall be furnished the following:

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

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002626
Jack E. Crump
Executive Director
Commission on Jail Standards
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-5505

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Chapter 291. SERVICES AND ACTIVITIES

37 TAC §291.5

The Texas Commission on Jail Standards proposes an amendment to §291.5 concerning Services and Activities to provide a standard consistent with legislative action regarding religious freedom.

Jack E. Crump, 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 sections.

Mr. Crump, executive director, has determined that for each year of the first five years the rule as proposed is in effect the public benefits anticipated as a result of enforcing the rule as proposed will be to ensure minimum standards comply with legislative actions regarding religious freedom.

There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed.

Comments on the proposal may be submitted to Brandon S. Wood, P. O. Box 12985, Austin, Texas, 78711, (512) 463-5505.

The amendment is proposed under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

The statutes that are affected by this rule are Local Government Code, Chapter 351, 351.002 and 351.015.

§291.5. Inmate Religious Practices [~~Services~~] Plan.

Each facility shall have and implement a written plan, approved by the Commission, governing religious practices. The plan shall include the following provisions: [~~access comparable to that normally available in the community. Where group services are held, provisions shall be made for the removal of inmates not wishing to participate. The plan shall:~~]

(1) removal of inmates not wishing to participate where group services are held;

(2) volunteer programs and access to religious leaders in addition to normal visitation, consistent with security restrictions;

(3) review of inmate requests regarding religious practices by the Sheriff/Operator or his designee;

(4) procedures for determining whether a request can be accommodated through the least restrictive means without presenting an undue burden or endangering the safety and security of the facility;

(A) documentation of the reason for denial if the request cannot be accommodated;

(B) utilization of the established grievance procedure when the inmate contends the denial is unjust.

[~~(1) allow for visitation and volunteer programs;~~]

[~~(2) provide for access to religious leaders in additional to normal visitation and shall allow an inmate to communicate with a minister of his/her choosing consistent with security restrictions.~~]

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

Filed with the Office of the Secretary of State, on April 13, 2000.

TRD-200002627
Jack E. Crump
Executive Director
Commission on Jail Standards
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-5505

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part 6. TEXAS COMMISSION FOR THE DEAF AND HARD OF HEARING

Chapter 182. SPECIALIZED TELECOMMUNICATIONS DEVICES ASSISTANCE PROGRAM

Subchapter A. DEFINITIONS

40 TAC §182.3

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §182.3. The amendment is proposed to define the term functionally equivalent as it relates to the type of equipment available.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be a better understanding of the term functionally equivalent. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Margaret Susman, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.3. Definitions.

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

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

(5) Functionally equivalent–Basic access to the telephone network that addresses the functional limitations of an individual and that resembles the basic access afforded to a non disabled individual.

(6) [~~(5)~~] Person with a disability–A person who has a disability which impairs the individual's ability to effectively access the telephone network.

(7) [~~(6)~~] Legal guardian–A person appointed by a court of competent jurisdiction to exercise the legal powers of another person.

(8) [~~(7)~~] Program–Specialized Telecommunications Assistance Program (STAP).

(9) [~~(8)~~] PUC–Public Utility Commission of Texas.

(10) [~~(9)~~] Resident–An individual who resides within the state of Texas with the intent to remain in Texas.

(11) [~~10~~] RTAC–Relay Texas Advisory Committee.

(12) [~~(11)~~] USF–Universal Service Fund.

(13) [~~(12)~~] Vendor–An entity or a person that is registered with the PUC and can sell basic specialized telecommunication devices or services as defined under this program.

(14) [~~(13)~~] Voucher–A document of record to be exchanged with a vendor guaranteeing payment of up to but not exceeding the amount specific for the basic specialized telecommunications devices or services listed on the face of the voucher.

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

Filed with the Office of the Secretary of State, on April 10, 2000.

TRD-200002559
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 407-3250

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40 TAC §182.4

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §182.4. The amendment is proposed to more clearly define how the types of equipment or service are determined as basic.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be a better understanding of the types of equipment or services that are available. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Margaret Susman, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.4. Determination of Basic Device or Service.

(a) In determining basic devices or services available for voucher exchange, the following criteria shall be applied:

(1) The device or service must be for the purpose of telephone access in the home or business;

(2) The device or service must mainly apply to telephone access functions and not to daily living functions unless a device or service for daily living functions enables an individual to access the telephone network and is less expensive than a device or service that mainly applies to telephone access functions;

(3) The device or service must serve to facilitate interactive communication that is functionally equivalent to that afforded by a basic telephone; and

(4) The service must be less expensive than a basic specialized telecommunications device approved for a voucher under this program and meeting the same need.

[~~(5) Due to the limited technology available, devices for individuals who are speech impaired will be evaluated on an individual basis.~~]

(b) A list of available equipment or services will be maintained by the Commission.

(c) Additional equipment or services added to the list in subsection (b) of this section after July 1, 2000 shall meet the criteria specified in subsection (a) 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 April 10, 2000.

TRD-200002558
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 407-3250

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Subchapter B. PROGRAM REQUIREMENTS

40 TAC §182.22

The Texas Commission for the Deaf and Hard of Hearing proposes an amendment to §182.22. The amendment is proposed to eliminate the returned check fee.

David W. Myers, Executive Director, has determined that for each year of the first five years the amendment to this section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Myers has also determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of this amendment will be a reduced cost burden to persons with disabilities. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed amendment may be submitted to Margaret Susman, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The amendment is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed amendment.

§182.22. Fees.

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

[~~(d) A $25 fee will be charged for each returned check.~~]

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

Filed with the Office of the Secretary of State, on April 10, 2000.

TRD-200002557
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 407-3250

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40 TAC §182.27

The Texas Commission for the Deaf and Hard of Hearing proposes new §182.27. The new rule is proposed to explain the authority the Commission has to keep confidential information received on an applicant.

David W. Myers, Executive Director, has determined that for each year of the first five years the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Myers has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of this rule will be a better understanding of the authority the Commission has to keep applicant records confidential. There will be no effect on small businesses. There is no anticipated economic hardship to persons required to comply with the amendment as proposed.

Comments on this proposed rule may be submitted to Margaret Susman, Texas Commission for the Deaf and Hard of Hearing, P.O. Box 12904, Austin, Texas, 78711-2904.

The new rule is proposed under the Human Resources Code, §81.006(b)(3), which provides the Texas Commission for the Deaf and Hard of Hearing with the authority to adopt rules for administration and programs.

No other statute, code or article is affected by this proposed rule.

§182.27. Client Confidentiality.

(a) All information made available to Commission employees in the course of the administration of the STAP, including lists of names and addresses is limited to use for purposes directly connected with the administration of the STAP.

(b) The Commission may not advertise, distribute, or publish the name or addresses or other related information received by the Commission about an individual who applies for assistance under STAP. Information concerning the STAP is exempted from disclosure under the public information act.

(c) All applicant information is the sole property of the Commission.

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

Filed with the Office of the Secretary of State, on April 10, 2000.

TRD-200002556
David Myers
Executive Director
Texas Commission for the Deaf and Hard of Hearing
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 407-3250

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Part 20. TEXAS WORKFORCE COMMISSION

Chapter 800. GENERAL ADMINISTRATION

The Texas Workforce Commission (Commission) proposes new §§800.81-800.86, amendments to the title of Subchapter C of Chapter 800 and the repeal of §800.60 relating to Reallocation of Funds.

Background and Purpose: The Commission's allocation rules provide a single set of rules to allocate funds that are subject to Local Workforce Development Board (Board) planning and oversight. The funds are provided to Local Workforce Development Areas (workforce areas) for the purpose of meeting the workforce training and services needs of eligible populations and for meeting or exceeding statewide performance measures as set forth in the General Appropriations Act. Reallocation has occurred as necessary at varying points of time, but not pursuant to any established schedule.

The proposed reallocation rules describe an approach that builds upon existing policy and provides a schedule for the reallocation process. The rule enhancements are to: promote effective planning and oversight, discourage over-expenditure, ensure performance in association with expenditures, announce clear timetables and benchmarks, reallocate funds to populations in need, and promote conditions that avoid the need for reallocation.

Section 800.81 sets forth the purpose, intent, notice and scope provisions. The Commission intends that the level of funding allocated to the workforce area be sufficient to ensure full utilization of funding, to ensure compliance with state and federal requirements applicable to the state, to meet the state's federal participation rates, to respond to caseload changes, and to respond to unforeseen demographic or economic changes. For example, this provision would allow the Commission to consider the relationships between different categories of funding in making deobligation and reallocation decisions. Section 800.81(d) clarifies that the rules contained in this subchapter will be effective beginning on September 1, 2000.

Section 800.82 sets forth definitions of the following terms to provide clarity and consistency in how the different categories of funding are managed by the Boards: expenditures, Funds Utilization and Service Level Plan, monthly expenditure report, obligation, program year, and service level report.

Section 800.83 sets forth the provisions relating to the Funds Utilization and Service Level Plan and reports to provide a method of tracking Board expenditures and performance under the Board's Funds Utilization and Service Level Plan.

Section 800.84 sets forth required expenditure, fund-raising and obligation levels. The Commission anticipates that Boards will expend funds throughout the year consistent with the Board's Funds Utilization and Service Level Plan. The Commission also expects that each Board shall leverage and raise local funds for workforce training and services and in particular child care

to access unmatched federal funds that are contingent upon Boards raising local donations, transfers, and certifications as required by the provisions of the General Appropriations Act.

The levels of reported expenditures by the end of the program year vary by category of funding based on (1) federal statutory requirements, (2) spending cycles, and (3) reasonable operating carryover budgets, based on general business practices to ensure no overspending occurs and no disruptions to client services will result at the end of a program year.

Section 800.85 sets forth provisions relating to deobligation of funds, including the methods for deobligating and the requests to deobligate from the Boards. Regarding deobligation of Child Care funds, the Commission believes that the number of child care units of service represents the best indicator of performance for purposes of managing funding, because the number of child care units of service directly reflects how much of the funding is used for direct child care services and is more accurate for purposes of deobligation than a count of the total number of children served.

Section 800.86 sets forth the criteria for Boards to be eligible for reallocated funds and the method of reallocating for each category of funding.

The Commission has provided copies of a draft reallocation policy, which sets forth the concepts upon which the proposed rules were drafted, to the Boards for comment. A conference call has been held to provide representatives of the Boards with an opportunity to respond to the draft policy. The Commission has considered input from the Boards in the drafting of the proposed rules prior to publication in the *Texas Register*.

Randy Townsend, Chief Financial Officer, has determined that for the first five years the rules are in effect, the following statements will apply:

there are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules;

there are no estimated reductions in costs to the state or to local governments expected as a result of enforcing or administering the rules;

there are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules;

there are no foreseeable implications relating to costs or revenues to the state or to local governments as a result of enforcing or administering the rules; and

there are no anticipated costs to persons who are required to comply with the rules as proposed.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering these rules because small businesses (including micro-businesses) are not required to do anything by these rules and are not regulated by these rules. The reallocation rules are intended to avoid failures to comply with specific state and federal requirements and the Commission's policies, including satisfaction of acceptable levels of expenditure and accomplishment of appropriate levels of program performance, is a result of federal and state statutory and regulatory requirements and standards. Similarly, these rules provide that no net decrease in block grant fund allocations among all Boards would result from administration of articulated, consistent, and reasonable reallocation standards and procedures.

Jean Mitchell, Director of Workforce Development, has determined that the public benefit anticipated as a result of the rules as proposed will be to maximize the use of workforce development funds and to ensure that all available funds are used to provide services by reallocating available funds to populations in need.

Mark Hughes, Director of Labor Market Information, has determined that there is no foreseeable negative impact upon employment conditions in this state as a result of these proposed rules.

Comments on the proposed rules may be submitted to Barbara Cigainero, Workforce Development Division, Texas Workforce Commission, 101 East 15th Street, Room 130BT, Austin, Texas, 78778; Fax Number (512) 463-3424; or E-mail to barbara.cigainero@twc.state.tx.us. Comments must be received by the Commission no later than 30 days from the date this proposal is published in the *Texas Register*.

Subchapter B. ALLOCATIONS AND FUNDING

40 TAC §800.60

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

The repeal is proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposed repeal affects the Texas Labor Code, Title 4.

§800.60. Reallocation of 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 April 17, 2000.

TRD-200002695

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Earliest possible date of adoption: May 28, 2000

For further information, please call: (512) 463-8812

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Subchapter C. REALLOCATION OF FUNDS

40 TAC §§800.81-800.86

The amended title of Subchapter C and new sections are proposed under Texas Labor Code §301.061 and §302.002, which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Commission services and activities.

The proposal affects the Texas Labor Code, Title 4.

§800.81. General Provisions.

(a) Purpose. The purpose of this rule is to promote effective service delivery and financial planning and management, to ensure

full utilization of funding, and to reallocate funds to populations in need.

(b) Intent. Notwithstanding any other provision of the rules contained in 40 TAC, Part 20, relating to the Texas Workforce Commission, except for funding for Welfare-to-Work, WIA Adult, WIA Youth and WIA Dislocated Worker, the level of funding allocated to a workforce area may be modified or reallocated by the Commission for one or more of the following reasons:

(1) to ensure full utilization of the funding;

(2) to ensure compliance with state and federal requirements applicable to the state;

(3) to meet the state's federal participation rates;

(4) to respond to caseload changes; or

(5) to respond to unforeseen demographic or economic changes.

(c) Scope.

(1) This subchapter shall apply to funds provided to workforce areas under a contract between the Board and the Commission for the following categories of funding:

(A) Child Care;

(B) Choices;

(C) Food Stamp Employment and Training;

(D) WIA Adult;

(E) WIA Dislocated Worker; and

(F) WIA Youth.

(2) This subchapter does not apply to funds provided to workforce areas under a contract between the Board and the Commission for the following unless otherwise indicated:

(A) WIA Rapid Response for Dislocated Workers;

(B) Child Care services under contract with the Texas Department of Protective and Regulatory Services; and

(C) Employment services, 29 U.S.C.A. §49 *et seq.*.

(3) Sections 800.81, 800.82, and 800.83 of this subchapter (relating to General Provisions; Definitions; and Required Expenditure, Fund-raising and Obligation Levels) shall apply to funds provided to workforce areas under a contract between the Board and the Commission for Welfare-to-Work, 42 U.S.C.A. §603 *et seq.*

(d) Effective Date. This subchapter shall be effective on September 1, 2000, and applicable to any funds allocated to the Boards or not yet expended by the Boards on or after September 1, 2000.

§800.82. Definitions.

In addition to the definitions in §800.2 of this title, the following terms, when used in this subchapter, shall have the following meanings unless the context clearly indicates otherwise:

(1) Expenditures–Costs incurred for goods and services that cause decreases in net financial resources.

(2) Funds Utilization and Service Level Plan–A Board plan that includes:

(A) a funds utilization schedule for accrued expenditures that demonstrates that each allocation shall be fully utilized within the Funds Utilization Plan period established by the Commission, and

(B) a service level schedule that lists the number of enrollments or other activities as may be determined by the Commission, to be completed during a specified period, and that demonstrates achievement of performance benchmarks consistent with the Board's contract performance goals and integrated workforce training and services plan.

(3) Monthly expenditure report–A report submitted by a Board that contains information regarding services for each category of funding allocated by the Commission, and in which the Board lists expenditures by category of funding, as referenced in §800.83 of this subchapter (relating to Funds Utilization and Service Level Plan and Reports), for each month of the reporting period.

(4) Obligation–A debt established by a legally binding contract, letter of agreement, sub-grant award, or purchase order, which has been executed prior to the end of a program year, and which will be performed within the program year or within 90 calendar days after the end of a program year. Any obligation periods extending beyond 90 days after the program year shall be prorated using the straight-line method or other acceptable proration method that accurately matches benefits received with dollars included as obligations.

(5) Program year–The twelve-month period applicable to the funding as referenced in §800.83 of this subchapter. The program years are as follows:

(A) Child Care: September 1 - August 31;

(B) Choices: September 1 - August 31;

(C) Welfare-to-Work: September 1 - August 31;

(D) Food Stamp Employment and Training: September 1 - August 31;

(E) WIA Adult: July 1 - June 30;

(F) WIA Dislocated Worker: July 1 - June 30; and

(G) WIA Youth: July 1 - June 30.

(6) Service level report–A Board report that is submitted periodically to the Commission, with information in a format determined by the Commission, on the number of:

(A) Child Care units of service, as well as pledged and completed local funds as specified in §809.20 of this title;

(B) Choices individuals participating in Temporary Assistance for Needy Families component activities, and the number of Choices participants meeting minimum work requirements who are included in calculating federal work participation rates;

(C) Welfare-to-Work participants served;

(D) Food Stamp Employment and Training mandatory work registrants served and Able Bodied Adults Without Dependents (ABAWDs) served;

(E) WIA Adult participants who received a WIA service;

(F) WIA Dislocated Worker participants who received a WIA service; and

(G) WIA Youth participants who received a WIA service.

§800.83. Funds Utilization and Service Level Plan and Reports.

(a) Planning.

(1) A Board shall annually on a schedule as determined by the Commission submit for approval a Funds Utilization and Service Level Plan that contains information regarding each category of funding as specified by the Commission, including the categories listed in §800.81(c)(1) and (3) of this subchapter (relating to General Provisions). A Board shall include the Funds Utilization and Service Level Plan as part of the Board's integrated workforce training and services plan, as well as part of the Board's annual plan modifications.

(2) A Board shall ensure that the plan describes the funds utilization and service levels for each of the categories of funding specified by the Commission for each corresponding program year.

(3) A Board which has been subject to deobligation of funds or a Board receiving reallocated funds shall submit to the Commission for approval a revised Funds Utilization and Service Level Plan within 45 days of notification of the Commission's action to deobligate or reallocate. A Board may also amend its Funds Utilization and Service Level Plan if an unforeseen event would significantly impact a Board's plan.

(b) Reporting.

(1) A Board shall submit reports that list information as required by the Commission for the reporting period as follows:

(A) a monthly expenditure report on or before the 20th calendar day of the following month;

(B) a monthly service level report on or before the 20th calendar day of the following month; and

(C) any necessary revision to the monthly expenditure report and service level report pursuant to this section within 25 calendar days after the original due date of the report.

(2) The Commission may require that a Board amend expenditure reports and service level reports as the result of Commission monitoring reviews or audits. Amended reports may be the basis for deobligation.

§800.84. Required Expenditure, Fund-raising and Obligation Levels.

(a) For Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds), Choices, and Food Stamp Employment and Training funds provided by the Commission, a Board shall meet the following expenditure levels:

(1) by the end of the fourth month following the beginning of the program year, reported expenditure of at least 90% of the planned expenditure level in the Funds Utilization and Service Level Plan;

(2) by the end of the eighth month following the beginning of the program year, reported expenditure of at least 95% of the planned expenditure level in the Funds Utilization and Service Level Plan; and

(3) by the end of the twelfth month following the beginning of the program year, reported expenditure levels of the total annual allocation of:

(A) at least 98% for Child Care, unless the Board has an allocation of less than $5,000,000, in which case the Board shall expend at least 96% for Child Care;

(B) at least 95% for Choices; and

(C) 100% for Food Stamp Employment and Training.

(b) For Child Care funds (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds) which do not exceed 2.0% of the total contracted amount or 4.0% for Boards with allocations of less than $5,000,000, and Choices funds which do not exceed 5.0% of the total contracted amount, that are unexpended by the close of the twelve-month program year, a Board shall expend funds by the end of the fourth month of the next program year. The Commission may deobligate and reallocate, as provided in §800.85 and §800.86 of this subchapter (relating to Deobligation of Funds and Reallocation of Funds), unexpended balances not expended in accordance with this subsection.

(c) For unmatched federal Child Care funds that are contingent upon a Board raising local funds, a Board shall meet the following performance requirements:

(1) by the end of the fourth month following the beginning of the program year, pledged donations, transfers and certifications totaling at least 100% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area;

(2) by the end of the eighth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 60% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area; and

(3) by the end of the twelfth month following the beginning of the program year, completed donations, transfers and certifications totaling at least 100% of the amount the Board needs to raise to access all of the unmatched federal Child Care funds available to the workforce area.

(d) For WIA Adult, WIA Dislocated Worker, and WIA Youth funds, a Board shall meet the following reported levels for each of these categories of funding:

(1) by the end of the twelfth month following the beginning of a program year, obligation of at least 80% of the allocation for each category of funding less any amount reserved up to 10% for costs of administration; and

(2) by the end of the 24th month following the beginning of a program year, expenditure of 100% of the allocation for each category of funding.

(e) If a Board fails to achieve required expenditure, fund-raising, or obligation levels as indicated in this section, the Commission may deobligate funds from the Board.

§800.85. Deobligation of Funds.

(a) For deobligation of Child Care (excluding unmatched federal Child Care funds that are contingent upon a Board raising local funds), Choices, and Food Stamp Employment and Training funds, the Commission may, for the category of funding:

(1) deobligate all or part of the difference between a Board's actual expenditure level and the required expenditure level described in §800.84(a) and (b) of this subchapter (relating to Required Expenditure, Fund-raising and Obligation Levels), as applicable for each category of funding for that period; and

(2) consider a Board's current service levels in determining to what degree to deobligate funds.

(b) For deobligation of unmatched federal Child Care funds that are contingent upon a Board raising local funds, the Commission may deobligate all or part of the difference a Board's actual

fund-raising level and the required fund-raising level described in §800.84(c) of this subchapter.

(c) For deobligation of WIA Adult, WIA Dislocated Worker, and WIA Youth funds, the Commission shall deobligate funds from each of these categories of funding as follows:

(1) after the end of the twelfth month following the beginning of a program year, any unobligated funds which exceed 20% of the allocation for WIA Adult, WIA Dislocated Worker, or WIA Youth for that program year, less any amount reserved up to 10% for costs of administration; and

(2) after the end of the 24th month following the beginning of a program year, any unexpended funds of the program year allocation for WIA Adult, WIA Dislocated Worker or WIA Youth.

(d) For voluntary deobligation, a Board may submit a written request that the Commission deobligate a portion of the Board's allocation for one or more categories of funding. The Commission shall determine whether to approve requests for deobligation.

§800.86. Reallocation of Funds.

(a) Combining Funds. The Commission shall combine the funds deobligated from Boards by categories of funding for each obligation period and may reallocate funds to eligible Boards.

(b) Eligibility. To be eligible for reallocation of funds relating to a category of funding, a Board shall meet the additional criteria set forth in this section that is applicable to the category of funding and shall submit a timely written request to receive reallocated funds listing the maximum amount of reallocated funds which the Board intends to utilize.

(1) For reallocation of Child Care (excluding unmatched federal funds that are contingent upon a Board raising local funds), Choices, and Food Stamp Employment and Training funds to be eligible for a reallocation for the category of funding, a Board shall:

(A) have met expenditure levels as required by §800.84(a) and (b) of this subchapter (relating to Required Expenditure, Fund-raising and Obligation Levels), as applicable, for that period;

(B) have expended at the levels outlined in §800.84 of this subchapter, but not more than 110% of the planned funds utilization level for funding for the applicable expenditure period and program year, and not more than 100% of the workforce area's allocation for the category of funding;

(C) be within 90% of the planned service level;

(D) have demonstrated that expenditures conform to cost category limits for funding;

(E) have demonstrated the need for and ability to use additional funds;

(F) be current on expenditure and service level reporting;

(G) be current with all single audit requirements; and

(H) not be under preventive maintenance or sanctions.

(2) For reallocation of the unmatched federal Child Care funds that are contingent upon a Board raising local funds, a Board shall have met the fund-raising requirements set out in §800.84(c) of this subchapter, for the program year from which funds were deobligated.

(3) For reallocation of WIA Adult, WIA Dislocated Worker and WIA Youth funds, to be eligible for a reallocation, a Board shall have met the obligation or expenditure requirement set out in §800.84(d) of this subchapter, for the category of funding for the program year from which funds were deobligated.

(c) Reallocation.

(1) For reallocation of Child Care, including unmatched federal funds that are contingent upon a Board raising local funds, Choices, and Food Stamp and Employment and Training funds, the Commission may reallocate funds to eligible Boards based on the applicable allocation method set forth in Subchapter B of this chapter (relating to Allocation and Funding). In determining the amount to be reallocated, the Commission may also consider:

(A) the amount specified by an eligible Board in the timely written request for additional funds;

(B) an eligible Board's ability to expend funds to address the need for services in the workforce area;

(C) an eligible Board's financial and service performance during the prior program year; and

(D) related factors as necessary to ensure that funds are fully utilized.

(2) For WIA Adult, WIA Dislocated Worker and WIA Youth funds, the Commission shall reallocate funds as provided in WIA §128 and §133.

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

Filed with the Office of the Secretary of State, on April 17, 2000.

TRD-200002694
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Earliest possible date of adoption: May 28, 2000
For further information, please call: (512) 463-8812

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the ***Texas Register***. The notice is effective immediately upon filling or 20 days after filing as specified by the agency withdrawing the action. If a proposal is not adopted or withdrawn within six months of the date of publication in the ***Texas Register***, it will automatically be withdrawn by the office of the Texas Register and a notice of the withdrawal will appear in the ***Texas Register.***

TITLE 16. ECONOMIC REGULATION

Part 9. TEXAS LOTTERY COMMISSION

Chapter 401. ADMINISTRATION OF STATE LOTTERY ACT

Subchapter A. PROCUREMENT

16 TAC §401.101

The Texas Lottery Commission has withdrawn from consideration the proposed amendment to §401.101, which appeared in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11848).

Filed with the Office of the Secretary of State on April 17, 2000.

TRD-200002698
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Effective date: April 17, 2000
For further information, please call: (512) 344-5050

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16 TAC §401.102

The Texas Lottery Commission has withdrawn from consideration proposed new §401.102, which appeared in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11852).

Filed with the Office of the Secretary of State on April 17, 2000.

TRD-200002699
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Effective date: April 17, 2000
For further information, please call: (512) 344-5050

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16 TAC §401.103

The Texas Lottery Commission has withdrawn from consideration proposed new §401.103, which appeared in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11853).

Filed with the Office of the Secretary of State on April 17, 2000.

TRD-200002700
Ridgely C. Bennett
Deputy General Counsel
Texas Lottery Commission
Effective date: April 17, 2000
For further information, please call: (512) 344-5050

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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 157. EMERGENCY MEDICAL CARE

Subchapter C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §§157.32, 157.34, 157.40

The Texas Department of Health has withdrawn from consideration proposed new §157.32 and §157.34 and the proposed amendment of §157.40, which appeared in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9534).

Filed with the Office of the Secretary of State on April 10, 2000.

TRD-200002572
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: April 10, 2000
For further information, please call: (512) 458-7236

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25 TAC §157.38

The Texas Department of Health has withdrawn from consideration the proposed repeal of §157.38, which appeared in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9534).

Filed with the Office of the Secretary of State on April 10, 2000.

TRD-200002571
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: April 10, 2000
For further information, please call: (512) 458-7236

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Subchapter D. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

25 TAC §157.42

The Texas Department of Health has withdrawn from consideration proposed new §157.42, which appeared in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9534).

Filed with the Office of the Secretary of State on April 10, 2000.

TRD-200002574
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: April 10, 2000
For further information, please call: (512) 458-7236

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ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the ***Texas Register***. The section becomes effective 20 days after the agency files the correct document with the ***Texas Register***, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 4. AGRICULTURE

Part 1. TEXAS DEPARTMENT OF AGRICULTURE

Chapter 3. BOLL WEEVIL ERADICATION PROGRAM

Subchapter D. REQUIREMENTS FOR PARTICIPATION IN THE ERADICATION PROGRAM AND ADMINISTRATIVE PENALTY ENFORCEMENT

4 TAC §3.72, §3.73

The Texas Department of Agriculture (the department) adopts the amendments to §3.72 and §3.73, concerning the reporting of cotton acreage as required for participation in the Texas Boll Weevil Eradication Foundation and notice of participation requirements, without changes to the proposal published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1483).

The amendments to §3.72 are adopted to clarify the reporting requirements, coordinate the reporting with that required by the United States Department of Agriculture's (USDA) Farm Service Agency and to eliminate double reporting. Further, the amendments to §3.72 will result in greater efficiency in reporting of acreage, therefore ensuring proper assessment and collection of revenue for the boll weevil eradication program. The amendments to §3.73 are adopted to establish more reasonable and timely requirements for providing notice to cotton growers of participation requirements for the boll weevil eradication program. The amendment to §3.72 establishes deadlines for the reporting of cotton acreage by a cotton grower in an established boll weevil eradication zone and provides procedures for reporting such acreage to either the Farm Service Agency of the USDA or the Texas Boll Weevil Eradication Foundation. The amendment to §3.73 eliminates the 30-day requirement for the publication of a notice of participation, adds language requiring that such a notice be published upon establishment of new requirements, and further clarifies that notice will be provided upon the passage of a referendum to establish an eradication program and maximum assessment for a zone.

No comments were received on the proposal.

The amendments are adopted under the Texas Agriculture Code (the Code), §74.118 which provides the department with the authority to adopt reasonable rules regarding participation in a boll weevil eradication program by cotton growers in an established eradication zone; the Code, §74.121, which requires growers to furnish to the Texas Boll Weevil Eradication Foundation information concerning the size and location of all commercial and noncommercial cotton fields; and, the Code, §74.120, which provides the department with the authority to adopt reasonable rules to carry out the purposes of the Code, Chapter 74, Subchapter D.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002640
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: May 3, 2000
Proposal publication date: February 25, 2000
For further information, please call: (512) 463-4075

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Subchapter G. TRANSFER OR ADDITION OF AREAS FROM ONE ERADICATION ZONE TO ANOTHER ZONE

4 TAC §3.304, §3.305

The Texas Department of Agriculture (the department) adopts new §3.304 and §3.305, concerning modification of boll weevil eradication zones without changes to the proposal published in the March 10, 2000 issue of the *Texas Register* (25 TexReg 1927).

The new sections are adopted to transfer areas from one boll weevil eradication zone to another zone created under the Texas Agriculture Code, Chapter 74, Subchapter D. The new sections were proposed and are adopted upon the request of cotton producers in the affected counties and upon recommendation of the Texas Boll Weevil Eradication Foundation's Board of Director's and technical advisory committee. The transfers are adopted in accordance with the Texas Agriculture Code, §74.108(b), in order to ensure that contiguous cotton-growing areas with similar biological characteristics are treated within one zone and to give growers a mechanism to address cotton growers' desires to have efficient, responsive eradication zones

to facilitate boll weevil eradication in Texas. New §3.304 transfers all of Kent County and portions of Motley, Dickens, Garza, Floyd, and Crosby Counties from the Northern High Plains Boll Weevil Eradication Zone and the Southern High Plains/Caprock Boll Weevil Eradication Zone to the Northern Rolling Plains Boll Weevil Eradication Zone. New §3.305 transfers portions of Motley and Briscoe Counties from the Northern High Plains Boll Weevil Eradication Zone and Southern High Plains/Caprock Boll Weevil Eradication Zone to the Northern Rolling Plains Boll Weevil Eradication Zone.

No comments were received on the proposal.

The new sections are adopted under the Texas Agriculture Code, §74.108(b), which provides the commissioner of agriculture with the authority, by rule, to add an area to an eradication zone or transfer an area or county from one statutory zone to another.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2000.

TRD-200002563
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: April 30, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

Part 7. STATE SECURITIES BOARD

Chapter 113. REGISTRATION OF SECURITIES

7 TAC §§113.14, 113.15, 113.17, 113.20 - 113.23

The State Securities Board adopts amendments to §§113.14, 113.15, 113.17 and 113.20-113.23, concerning registration of securities, without changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11842).

The amendments incorporate recent changes to the North American Securities Administrators Association uniform guidelines addressing corporate securities definitions; impoundment of proceeds; underwriting expenses, underwriter's warrants, selling expenses, and selling security holders; and unsound financial condition.

The amendments maintain consistency with uniform guidelines for the registration of securities applied by other states securities regulators and, by doing so, facilitate participation in the Coordinated Equity Review program.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 12, 2000.

TRD-200002610
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: May 2, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 305-8300

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Chapter 114. FEDERAL COVERED SECURITIES

7 TAC §114.4

The State Securities Board adopts an amendment to §114.4 regarding filings and fees, without changes to the proposed text as published in the December 31, 1999, issue of the *Texas Register* (24 TexReg 11845).

The amendment eliminates a notice filing provision for industrial development bonds that are also federal covered securities. The notice filing is unnecessary following the repeal of provisions in Chapter 135 that required registration or notice filing for securities sold by Industrial Development Corporations.

The adoption of this amendment eliminates an unnecessary provision since issuers of industrial development bonds will be able to utilize a self-executing exemption.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 581-28- 1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by 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 April 12, 2000.

TRD-200002611
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: May 2, 2000
Proposal publication date: December 31, 1999
For further information, please call: (512) 305-8300

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TITLE 10. COMMUNITY DEVELOPMENT

Part 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

Chapter 1. ADMINISTRATION

Subchapter B. BLOCK GRANTS

10 TAC §1.13

The Texas Department of Housing and Community Affairs (Department) adopts the amendment to §1.13 concerning the Department's block grant complaint system without changes to the proposed text published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 1928).

The adopted amendment changes the person to whom complaints are submitted.

No comments were received regarding the proposed changes to this section.

The amended section is adopted under Texas Government Code, §2306.066, which provides Texas Department of Housing and Community Affairs with the authority to develop procedures by which complaints are filed with the department.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2000.

TRD-200002594
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Effective date: May 1, 2000
Proposal publication date: March 10, 2000
For further information, please call: (512) 475-3726

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TITLE 16. ECONOMIC REGULATION

Part 1. RAILROAD COMMISSION OF TEXAS

Chapter 3. OIL AND GAS DIVISION

16 TAC §3.26

The Railroad Commission of Texas adopts amendments to §3.26, regarding separating devices, tanks, and surface commingling of oil, without changes to the version published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1484). The adopted amendments reduce the regulatory burden on oil and gas wells and reduce operating costs for industry by reducing the frequency of well testing of commingled wells while insuring the protection of the correlative rights of the working and royalty interest owners. Reduced operating costs may enable operators to continue producing hydrocarbons that otherwise would not be produced due to unfavorable economic conditions.

The adopted amendments to subsection (b)(3)(A) eliminate the currently-prescribed three intervals of testing with a requirement for semi-annual testing. The adopted amendments to subsection (b)(3)(B) eliminate the requirement that operators obtain the written consent of all royalty and working interest owners before implementing less frequent testing. Instead, under the adopted amendments to subsection (b)(3)(B) operators may be permitted to utilize annual testing upon written application demonstrating to the Commission that annual testing will not harm the correlative rights of the working or royalty interest owners of the commingled wells.

The Commission simultaneously readopts §3.26, with the adopted amendments, in accordance with Texas Government Code, §2001.039. The agency's reasons for adopting this rule continue to exist. The notice of proposed review was filed with the *Texas Register* concurrently with the proposed amendments and published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1732).

The Commission received no comments on the proposal.

The Commission adopts the amendments pursuant to Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.046, 85.053, 85.054, 85.201, 85.202, 86.011, 86.012, 86.041, and 86.042, which authorize the Commission to adopt rules for the following purposes: to govern and regulate persons and their operations under the jurisdiction of the Commission; to distribute, prorate and apportion allowable production; to adjust correlative rights and opportunities; to determine the daily allowable production for each well; to effectuate the provisions and purposes of the Natural Resources Code; and to conserve and prevent waste of oil and gas.

Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.046, 85.053, 85.054, 85.201, 85.202, 86.011, 86.012, 86.041, and 86.042, are affected by the adopted amendments.

Issued in Austin, Texas on April 11, 2000.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 11, 2000.

TRD-200002592
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: May 1, 2000
Proposal publication date: February 25, 2000
For further information, please call: (512) 475-1295

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16 TAC §3.106

The Railroad Commission of Texas adopts new §3.106, relating to sour gas pipeline facility construction permits, with changes to the version published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1486). The commission had previously published a proposed version of this rule, the product of more than two years' of drafting, discussion, and revision, in the August 13, 1999, issue of the *Texas Register*; that proposal generated numerous comments and suggestions for changes, many of which the commission has incorporated into the version of §3.106 published on February 25, 2000. The new section implements House Bill 3194, 75th Legislature, Regular Session, which enacted Texas Civil Statutes, Article 6053-4 (now codified at Texas Utilities Code, §§121.451 - 121.454), which requires an operator to obtain a commission permit before beginning construction of a sour gas pipeline facility.

The commission received comments from two associations, the Texas Oil and Gas Association (TxOGA) and the Association of Texas Intrastate Natural Gas Pipelines (ATINGP). TxOGA's comments did not specifically express either support or opposition to new §3.106 while ATINGP's comments stated general support for the new rule. The specific points of each group's comments and the commission's responses are discussed in subsequent paragraphs with the summary of the factual basis for new §3.106 as adopted.

New §3.106 establishes procedures for the required permit for construction of a sour gas pipeline facility. The new rule defines terms; requires a permit to construct a sour gas pipeline facility and identifies those sour gas pipelines which will be exempted from the new rule; explains the permit application process; states those items which will be required for approval of the permit; establishes guidelines for filing protests; provides for hearings in certain circumstances; and establishes deadlines for processing applications.

Existing rule §3.36 of this title, relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas, has been in effect since prior to the creation of the Texas Administrative Code on January 1, 1976, and has been adequate to protect human health and the environment. However, the legislature, through its enactment of Texas Utilities Code, §§121.451 - 121.454, has directed the commission to issue sour gas pipeline facility construction permits. Regardless of the merits of rule §3.36, the commission is compelled to undertake the permitting activities prescribed by Texas Utilities Code, §§121.451 - 121.454. The commission keenly appreciates concerns about unneeded regulation; nevertheless, the commission believes that this rule is necessary and appropriate to ensure that operators and the public are informed about the commission's interpretation of Texas Utilities Code, §§121.451 - 121.454, particularly in light of the controversies attendant to this rulemaking.

For example, there was some concern initially that Texas Utilities Code, §§121.451 - 121.454, would subject all pipelines in the state, not just those subject to the federal pipeline safety program, to pipeline safety standards. The commission does not interpret the statute to impose pipeline safety regulations in situations where they were not previously applicable. Similarly, there was a great deal of controversy as to whether this rule would or should mandate submission of a complete contingency plan, if required by §3.36 of this title, prior to construction permit issuance. The commission believes it is not only appropriate but necessary to provide both industry and the public with this rule to ensure that both groups are adequately informed about the commission's interpretation of and the procedures it will follow in applying Texas Utilities Code, §§121.451 - 121.454, facilitating fair and uniform administration of that statute.

The commission acknowledges that this rule could, in some cases, delay the commencement of pipeline construction and, ultimately, the production and transportation of natural gas and oil containing some amount of sour gas. Such delays might conceivably have an impact on the ad valorem taxes that local governments might otherwise be able to collect; and might impose additional economic costs on operators because of the loss of production income during the pendency of the permitting process and, if necessary, a hearing. However, the commission has attempted to balance the impacts on local governments and operators with the obligations imposed on the commission by the legislature to ensure that affected persons receive timely notice of proposed construction of sour gas pipeline facilities and a meaningful opportunity to participate in the commission's consideration of applications for these projects, *i.e.*, before construction commences. The commission recognizes the legitimate desire on the part of industry to expedite the hearing process to avoid delays in production operations. The commission has made and will continue to make every effort to ensure that permit applications are processed as expeditiously as possible while still meeting the mandates of Texas Utilities Code, §§121.451 - 121.454. As of the end of July 1999, the commission had received 22 applications for sour gas pipeline facility permits. Of these, three were withdrawn, five took from four to six weeks to process, eight took from 10 to 12 weeks to process, five took from 16 to 18 weeks to process, and one took 32 weeks to process. Longer processing times generally were associated with permit applications that were incomplete when filed.

The commission has declined to limit the definition of the term "affected person" in §3.106(a)(1) to include the owner or occupant of property as of the date of publication of notice, not the final day to file protests, in order to avoid attempts to gain standing through a quick purchase of property following public notice. The commission does not believe such limitations are necessary. Instances in which an individual would acquire property for the sole purpose of becoming an affected person are likely to be rare. The commission believes it appropriate to ensure that a person who has a contingent right to ownership or occupancy "such as a contract to buy a piece of property" as of the date of publication which is finalized prior to the protest deadline has the right to protest an application.

To avoid confusion with particular terms and requirements in §3.36 of this title, the commission has used the term "area of influence" in new §3.106, defining it in subsection (a)(4), rather than the term "area of exposure," which is used in §3.36. In addition, the commission has included in subsection (a)(12) a definition of the term "100 ppm radius" as the substitute for the term "radius or radii of exposure," the more broadly defined term found in §3.36.

The commission has also crafted the definition of "construction of a facility" in subsection (a)(5) to exclude repair, maintenance, and enhancement activities that do not result in an increase in the area of influence of a sour gas pipeline facility, so that operators may avoid having to repermit a pipeline whenever an inconsequential equipment change is made.

"Nominal pipe size" is an industry term that might not need to be defined in the rule to have meaning for the industry; however, industry convention is that for pipe sizes 14 inches and greater, the nominal pipe size is the approximate outer diameter; for pipe sizes of less than 14 inches, it is the approximate inner diameter. The commission believes that the term should be defined for the convenience of members of the public who are unfamiliar with both industry terminology and industry convention in the use of this term. Therefore, for clarity, the definition for "nominal pipe size" in subsection (a)(7) is stated in terms of inner diameter.

The definition of the term "sour gas pipeline facility" in subsection (a)(10) garnered comments from TxOGA and ATINGP, both of which urged the addition of the phrase "gas having" between "contains" and "a concentration." Both comments stated that without this clarifying wording, the definition would apply to a crude oil pipeline if hydrogen sulfide would be liberated in sufficient amounts in the event of a spill. Both comments declare this to be contrary to the intent of House Bill 3194. This

same view was urged initially in response to the first publication of this proposed rule in August 1999, and the commission still declines to make the suggested change. Texas Utilities Code, §121.451(4), defines "sour gas pipeline facility" to mean "a pipeline facility that contains a concentration of 100 parts per million or more of hydrogen sulfide." The commission interprets the statute as being indifferent to whether the pipeline facility contains natural gas or crude oil and focused on those pipeline facilities containing a concentration of hydrogen sulfide of 100 parts per million or more. The rule applies to an oil pipeline if hydrogen sulfide will be liberated in sufficient amounts upon release.

ATINGP"s comment objected to the definition on the additional basis that it is inconsistent with §3.69(23) (SWR 79) of this title, relating to definitions, which defines "sour gas" to mean "any natural gas containing more than 1 1/2 grains of hydrogen sulphide per 100 cubic feet or more than 30 grains of total sulphur per 100 cubic feet, or gas which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes." Even if the definitions are inconsistent, that does not render the definition of "sour gas pipeline facility" in new §3.106 improper or incorrect; it is based on the legislature's definition of that term in Texas Utilities Code, §121.451(4), and is used to identify those facilities for which a construction permit must be obtained.

The scope of the definition of "sour gas pipeline facility" in subsection (a)(10) is further qualified by the requirement that it be located outside the tract of production. This, along with the definition of "tract of production" in subsection (a)(11), evidences the commission's intention to limit sour gas pipeline facility construction permits to that portion of the pipeline leaving the lease from which oil, gas, or other minerals are produced.

Subsection (b) restates the statutory prohibition on constructing sour gas pipeline facilities without first obtaining a permit, as set out in Texas Utilities Code, §121.453; the exceptions follow the statutory provisions found at Texas Utilities Code, §121.452. Subsection (b)(1)(C) provides that all pipeline preconstruction notices be routed through the commission's Gas Services Division. Preconstruction notices for all pipelines subject to the commission's pipeline safety program go through the Pipeline and LP-Gas Safety Section of the Gas Services Division. The commission believes that using consistent procedures for similar notices reduces unnecessary confusion for both applicants and commission staff, and decreases potential for lost or misplaced notices.

Subsection (c) covers the commission's administrative handling of filed applications. Persons filing a notice of intent to file an application may request and be assigned a docket number; this allows an applicant to publish the docket number of the filing in the notice.

Subsection (d) prescribes the contents of a complete application for a sour gas pipeline facility; the most difficult provision was the requirement in the original proposal, in subsection (d)(4), of filing a contingency plan if one is required under §3.36. Pipelines routes are frequently altered during construction to avoid obstructions and sensitive areas such as archaeological sites. The portion of a contingency plan that denotes the pipeline route cannot be effectively completed until construction has been accomplished because of the possibility of route changes. In addition, most contingency plans require a list of names and phone numbers of residents within the area of influence of a release. It creates unnecessary and duplicative effort on the part of the applicant to provide this list of names and phone numbers of residents with the application because the list will have to be updated after completion of pipeline construction and before transportation of sour gas commences.

Similarly, the commission recognizes that requiring the filing of a plat denoting all buildings within the area of influence prior to issuance of a permit under this rule places on applicants a particularly significant burden associated with preparing such a plat if the final pipeline route is not known. Because having accurate information about the nature of the buildings located within the area of influence (for example, schools, nursing homes, and hospitals) is critical to the commission's determination of the adequacy of a contingency plan, the commission has come up with other methods for providing this information that would not be as burdensome for the applicant.

Balancing the need to accommodate some pipeline rerouting during construction with the need for information about the area of influence, specifically the list of names, telephone numbers, and addresses of residents within the area of influence, the commission has included a definition of "preliminary contingency plan" in subsection (a)(9) of new §3.106, and has written subsection (d), regarding elements of a complete application, to allow applicants to file a preliminary contingency plan as an alternative to filing a complete contingency plan. As defined, a preliminary contingency plan includes all elements required for a contingency plan under §3.36, with three exceptions.

First, the plan need not include the names, addresses, and phone numbers of all residents within the area of influence, even if otherwise required, provided the preliminary plan includes a detailed explanation of the method by which the names, addresses and phone numbers of such residents will be compiled. Second, the preliminary plan need not include the final pipeline route provided that the area of influence as noticed in public notice encompasses the total area of influence associated with all possible pipeline routes proposed by the applicant. In this way, individuals who could potentially be affected persons in the event of pipeline rerouting would have notice of such possibility. Prior to commencement of pipeline operations, the final contingency plan, including the final route and list of names, addresses, and phone numbers of residents, if required, must be submitted as required under §3.36. Third, the requirement for filing a plat detailing the area of influence may be met by filing one of three things: the detailed plat required by §3.36(c)(9)(H); a plat on which the information required by §3.36(c)(9)(H) is provided by identifying residential, business, and industrial areas with an estimate of the number of people that may be within any such areas; or one or more aerial photographs covering the area and providing the information required under §3.36(c)(9)(H).

New §3.106, defines "affected persons" in subsection (a)(1) to include all persons who could own or occupy property located within the area of influence encompassed by all contemplated pipeline routes if the final route is not known at the time of application and notice. In addition, subsection (g), relating to persons with standing to protest an application, provides that the owner or occupant of real property encompassed by the area of influence as denoted in the application has standing to protest.

The "preliminary contingency plan" requires applicants to include the names, addresses, and telephone numbers for emergency response and support personnel (see §3.36(c)(9)(G)) as

well as the names and telephone numbers of the responsible parties for each of the possibly occupied public areas (see §3.36(c)(9)(J)). The commission does not find a substantial burden associated with compiling these phone lists and updating them immediately prior to commencement of operations.

Both TxOGA and ATINGP commented that the filing of a copy of the applicant's Application for Permit to Operate a Pipeline, Form T-4, be made optional so that an applicant whose pipeline route has not been finalized may still proceed with the application for a sour gas pipeline facility construction permit. The commission declines to make this change for several reasons: first, the information reported on the Form T-4 determines the status of the proposed pipeline with respect to the commission's pipeline safety jurisdiction; second, the pipeline route information on the map attachment has an accuracy of plus or minus 1,000 feet, so it provides only a general route; and third, the applicant may file an amended map, if necessary, prior to final commission action on the sour gas pipeline facility construction permit application if the applicant wants the order to include approval of the Form T-4.

With respect to notice requirements, set out in subsection (e), the commission determined that while Texas Utilities Code, §§121.451 - 121.454, allow issuance of a permit without a hearing, there is no provision for waivers of notice. In the absence of published notice, there is no mechanism for a potentially affected person who did not receive individual notice or waive notice to become informed about a proposed sour gas pipeline facility. Further, individual notice to affected persons does not meet the statutory requirement of newspaper publication of notice of a proposed sour gas pipeline facility; therefore, the commission's rule tracks the directives found in Texas Utilities Code, §121.453(b), which requires notice to the county clerk and one publication in a newspaper of general circulation in each county containing part of the proposed sour gas pipeline facility.

In response to a comment from ATINGP, the commission made clarifying changes in subsection (e)(1); to ensure that notice is given properly for those permit applications in which the area of influence of a proposed sour gas pipeline facility may extend across a county line, even if the pipeline route itself does not, the commission has substituted "area of influence" for "proposed route." Subsection (e) now provides that for each county that contains all or part of the area of influence of a proposed sour gas pipeline facility, an applicant must notify the county clerk and must publish notice in a newspaper of general circulation. Proof of notice to the county clerk may be made by return receipt filed at the commission; proof of publication must be made by filing with the commission the full page or pages of the newspaper containing the published notice.

To alleviate concerns that commission staff will delay its review of an application until it is "complete," this version of new §3.106 deletes proof of publication as an element of a complete application, and adds a new subsection (e)(2) that requires an applicant to provide proof of publication before the commission may take final action on an application.

Subsection (f) addresses the contents and format of the published notice. The notice must include a description of the geographic location of the proposed sour gas pipeline facility and the area of influence, to the extent that it is not clear from the plat required to be published as part of the notice. The rule also prescribes the text of the notice and provides graphic examples of acceptable plats. The commission has made editorial clarifying changes to subsection (f)(3). The standard for notice is that it be sufficient for a person to reasonably ascertain whether an owned or occupied property is within the area of influence.

Subsection (g) provides that affected persons have standing to file a protest to an application. In the event the final proposed pipeline route is not known at the time of application, any person who owns or occupies real property located within the area of influence identified in the application is considered to have standing to file a protest to an application. All protests must be in writing and filed at the commission no later than the 30th day after the notice is published in a newspaper in the county in which the person filing the protest owns or occupies real property; must state the name, address, and telephone number of every person on whose behalf the protest is being filed; and include a statement of the facts on which the person filing the protest relies to conclude that each person on whose behalf the protest is being filed is an affected person. These requirements are intended to ensure that affected persons timely file protests with the commission and provide sufficient information to enable the commission staff to evaluate the factual basis of the protest.

Subsection (h) describes the commission's review process. To meet the need for timely information, the commission staff will provide notice of application completeness or deficiencies in written form by mail, unless the applicant submits with the application a written request that notices of application completeness or deficiencies be provided by electronic mail to a specified electronic mail address, in which case such notices shall be provided by electronic mail. The commission believes that these alternatives achieve the balance between providing sufficiently timely information to applicants and allowing the commission to keep track of communications between staff and applicants regarding a specific permit application.

Subsection (h)(5) sets out and defines the conditions required for the commission's designee to recommend that a permit be "conditionally" granted or denied. This provision allows the commission to grant a permit subject to any and all conditions required to ensure compliance with applicable laws and regulations. In addition, the commission has defined certain key terms in new §3.106 in order to better distinguish the requirements of this rule from the more general provisions of §3.36.

Subsection (i) specifies that the commission will convene a hearing to consider an application for a sour gas pipeline construction permit if a protest is timely filed by an affected person; a request is timely filed by the applicant; or the commission so elects on its own motion. In the event that a hearing is to be held, the Office of General Counsel will assign an examiner to conduct a hearing in accordance with the procedural requirements of the Administrative Procedure Act and the commission's general rules of practice and procedure. The statute requires that the commission convene a hearing not later than the 60th day after a protest is filed; the commission has elected to use the same timetable for convening a hearing based on the applicant's request or the commission's own motion. The 60-day time period for convening a hearing does not begin to run until such time as notice of a complete application is issued unless the hearing is held because the applicant has requested a hearing on the application as it exists, in which case the hearing will be held within 60 days of receipt of a request for hearing. Nevertheless, in any hearing convened to consider an application, the applicant has the burden of showing

that the materials to be used in and method of construction and operation comply with the applicable rules and safety standards adopted by the commission.

In subsection (j), the commission attempted to balance the industry's desire to tighten the time lines for speedy completion of those applications in which no hearing is held with the commission's need for sufficient flexibility to address staffing contingencies or to allow adequate review by personnel responsible for presenting the application to the commission. To meet these concerns, subsection (j)(4) of new §3.106 provides that the commission's order shall be issued as soon as practicable but not later than the 60th day after staff prepares its recommendation.

TxOGA noted that the last sentence of subsection (j)(1) in proposed new §3.106 appeared to be redundant and should be deleted. The commission agrees and has made this change.

The commission adopts the new section under Texas Utilities Code, §§121.201 - 121.205, and Texas Natural Resources Code, §§117.001 - 117.101, which authorize the commission to adopt safety standards and practices applicable to the transportation of gas and hazardous liquids and all gas and hazardous liquid pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 U.S.C. §60101, *et seq.* (West 1998); Texas Natural Resources Code, §81.051, which gives the commission jurisdiction over all oil and gas wells and pipelines in Texas, over persons owning or engaged in drilling or operating oil or gas wells in Texas, and over persons owning or operating pipelines in Texas, and §81.052, which authorizes the commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission; and Texas Utilities Code, §§121.451 - 121.454, which codifies the provisions of Texas Civil Statutes, Articles 6053-4, enacted by House Bill 3194, 75th Legislature, Regular Session, 1997.

Texas Utilities Code, §§121.201 - 121.205 and 121.451 - 121.454, and Texas Natural Resources Code, §§81.051 - 81.052 and 117.001 - 117.101, are affected by the new section.

Issued in Austin, Texas, on April 11, 2000.

§3.106. Sour Gas Pipeline Facility Construction Permit.

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

(1) Affected person – The owner or occupant of real property located in the area of influence of the proposed route of a sour gas pipeline facility. If the final proposed route of the pipeline is unknown at the time of application, then an affected person is any person who owns or occupies real property located within the area of influence associated with any possible pipeline route identified by the applicant. For purposes of this definition, the owner shall be the owner of record as of the final day to protest an application. The occupant shall be the occupant as of the final day to protest an application.

(2) Applicant – A person who has filed an application for a permit to construct a sour gas pipeline facility, or a representative of that person.

(3) Application – Application for a Permit to Construct a Sour Gas Pipeline Facility, and all required attachments.

(4) Area of influence – Area along a sour gas pipeline facility represented by all possible areas of exposure using the 100 ppm radius.

(5) Construction of a facility – Any activity conducted during the initial construction of a pipeline including the removal of earth, vegetation, or obstructions along the proposed pipeline right-of-way. The term does not include:

(A) surveying or acquiring the right-of-way;

(B) clearing the right-of-way with the consent of the owner;

(C) repairing or maintaining an existing sour gas pipeline facility; or

(D) installing valves or meters or other devices or fabrications on an existing pipeline if such devices or fabrication do not result in an increase in the area of influence.

(6) Extension of a sour gas pipeline facility – An addition to an operating sour gas pipeline facility regardless of ownership of the addition.

(7) Nominal pipe size – The industry convention for naming pipe. Six inch nominal size pipe corresponds to pipe with an approximate inner diameter of six inches. The actual inner diameter varies based on the wall thickness of the pipe.

(8) Person – An individual, partnership, firm, corporation, joint venture, trust, association, or any other business entity, a state agency or institution, county, municipality, school district, or other governmental subdivision.

(9) Preliminary contingency plan – A contingency plan containing all of the elements required for a contingency plan under §3.36 of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas), except that:

(A) the plan need not contain the list of names and telephone numbers of residents within the area of influence if required under §3.36(c)(9)(I) of this section. In lieu of this list of names and telephone numbers, the plan shall contain a detailed explanation of the manner in which the names and telephone numbers of residents within the area of influence will be compiled prior to commencement of operations;

(B) the plat detailing the area of influence may be:

(i) the detailed plat required under §3.36(c)(9)(H);

(ii) a plat containing the information required under §3.36(c)(9)(H), that identifies residential, business, and industrial areas with an estimate of the number of people that may be within any such areas; or

(iii) one or more aerial photographs covering the area and providing the information required under §3.36(c)(9)(H); and

(C) a fixed pipeline route need not be specified in the preliminary plan provided the preliminary plan identifies the boundaries of the area within which the pipeline will be constructed and provided that all public notices of the application required under this section note such boundaries and identify the potential area of influence as the total area encompassed by the area of influence associated with all possible pipeline routes.

(10) Sour gas pipeline facility – A pipeline and ancillary equipment that:

(A) contains a concentration of 100 parts per million or more of hydrogen sulfide;

(B) is located outside the tract of production; and

(C) is subject to the requirements of §3.36 of this title.

(11) Tract of production – The surface area which overlies the area encompassed by a mineral lease or unit from which oil, gas, or other minerals are produced if such area is treated by the Oil and Gas Division of the commission as a single tract.

(12) 100 ppm radius – The 100 parts per million radius of exposure as calculated in §3.36(c)(1)-(3) of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas) for the sour gas pipeline facility.

(b) Permit Required; Exceptions. No person may commence construction of a facility within this State without a permit if the facility is initially used as a sour gas pipeline facility except for the following:

(1) an extension of an existing sour gas pipeline facility that at the time of construction of the extension is in compliance with §3.36 of this title (relating to oil, gas, or geothermal resource operation in a hydrogen sulfide area) if:

(A) the extension is not longer than five miles;

(B) the nominal pipe size is not larger than six inches; and

(C) the operator causes to be delivered to the Pipeline and LP-Gas Safety Section, Gas Services Division, written notice of construction of the extension not later than 24 hours before the start of construction;

(2) a new gathering system that operates at a working pressure of less than 50 pounds per square inch gauge;

(3) an extension of a gathering system which operates at a working pressure of less than 50 pounds per square inch gauge;

(4) an interstate gas pipeline facility, as defined by 49 U.S.C. §60101, that is used for the transportation of sour gas; or

(5) replacement of all or part of a sour gas pipeline facility if the area of influence of the replaced portion of the facility does not increase so as to include a public area, as defined in §3.36(b)(5) of this title, not included in the area of influence of the portion of the replaced sour gas pipeline facility.

(c) Filing and Assignment of Docket Number. Upon filing of an application with the Oil and Gas Division, staff will assign a docket number to the application and will notify the applicant of the assigned docket number. Staff will also assign and provide a docket number to a person who submits a notice of intent to file an application.

(d) Application. A complete application consists of:

(1) a properly completed application Form PS-79, with the original signature, in ink, of the applicant;

(2) if applicant desires notification under subsection (h)(1) by electronic mail, a written request for electronic mail notification and the applicant's electronic mail address;

(3) a plat which meets the requirements of subsection (f)(4) of this section and identifies the boundaries of surveys and blocks or sections as appropriate within the area of influence;

(4) a copy of the applicant's Application for Permit to Operate a Pipeline, Form T-4, if applicable, including all attachments; and

(5) a copy of the completed application for a Statewide Rule 36 Certificate of Compliance, Form H-9, including any attachment required under §3.36 of this title. A preliminary contingency plan may be filed in lieu of a contingency plan if required under §3.36 of this title.

(e) Notice.

(1) For each county that contains all or part of the area of influence of a proposed sour gas pipeline facility, the applicant shall:

(A) cause to be delivered to the county clerk no later than the first date of publication in that county a copy of the items described in subsection (d)(1)-(3) of this section;

(B) publish notice of its application in a newspaper of general circulation in each county that contains all or a portion of the area of influence of the proposed sour gas pipeline facility. Such notice shall meet the requirements of subsection (f) of this section and be published in a section of the newspaper containing news items of state or local interest.

(2) Final action may not be taken on any application under this section until proof of notice, evidenced as follows, is provided:

(A) a return receipt from each county clerk with whom an application form and plat is required to be filed pursuant to paragraph (1) of this subsection; and

(B) the full page or pages of the newspaper containing the published notice required under paragraph (2) of this subsection including the name of the paper, the date the notice was published, and the page number.

(f) The published notice of application shall be at least three inches by five inches in size, exclusive of the plat, and shall contain the following:

(1) the name, business address, and telephone number of the applicant and of the applicant's authorized representative, if any;

(2) a description of the geographic location of the sour gas pipeline facility and the area of influence, to the extent not clearly identified in the plat required to be published in subsection (f)(4) of this section;

(3) the following statement, completed as appropriate: "This proposed pipeline facility will transport sour gas that contains 100 parts per million, or more, of hydrogen sulfide. A copy of application forms and a map showing the location of the pipeline is available for public inspection at the offices of the (insert County name) County Clerk, located at the following address: (insert address of County Clerk). Any owner or occupant of land located within the area of influence of the proposed sour gas pipeline facility desiring to protest this application can do so by mailing or otherwise delivering a letter referring to the application (by docket number if available) and stating their desire to protest to: Docket Services, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967. Protests shall be in writing and received by Docket Services not later than (specify 30th day after the first date notice of the application is to be published). The letter shall include the name, address, and telephone number of every person on whose behalf the protest is filed and shall state the reasons each such person believes that he or she is the owner or occupant of property within the

area of influence of the proposed pipeline facility. It is recommended that a copy of this notice be included with the letter."; and

(4) a plat identifying:

(A) the location of the pipeline facility;

(B) area of influence;

(C) north arrow;

(D) scale;

(E) geographic subdivisions appropriate for the scale; and

(F) by inset or otherwise, landmarks or other features such as roads and highways in relation to the proposed route of the sour gas pipeline facility. These landmarks or other features shall be of sufficient detail to allow a person to reasonably ascertain whether an owned or occupied property that is within the area of influence of the proposed sour gas pipeline facility. Examples of acceptable plats are included in this subsection.

Figure 1: 16 TAC §3.106(f)(4)(F)

Figure 2: 16 TAC §3.106(f)(4)(F)

(g) Protests. Affected persons have standing to file a protest to an application. In the event the final proposed pipeline route is not known at the time of application, any person who owns or occupies real property located within the area of influence identified in the application shall have standing to file a protest to an application. All such protests shall:

(1) be in writing and filed at the commission no later than the 30th day after the notice is published in a newspaper in the county in which the person filing the protest owns or occupies real property;

(2) state the name, address, and telephone number of every person on whose behalf the protest is being filed; and

(3) include a statement of the facts on which the person filing the protest relies to conclude that each person on whose behalf the protest is being filed is an affected person, as defined in subsection (a)(1) of this section.

(h) Division Review.

(1) Within 14 days of receipt of the application, the commission's designee will provide notice to the applicant that the application is either complete and accepted for filing, or incomplete and specify the additional information required for acceptance. Such notice shall be provided in writing by mail or by electronic mail if the applicant submits with the application a written request that communications regarding application completeness or deficiencies be communicated by electronic mail and provides an accurate electronic mail address. The application shall be completed within 30 days of notification that the application is incomplete or such longer time as may be requested by the applicant, in writing, and approved by the commission's designee. If the application is not completed within the specified time period, the commission's designee shall send notice of intent to deny the application to the applicant. Within ten days of issuance of a notice of intent to deny the application for failure to complete the application, the applicant may request a hearing on the application as it exists at that time. If a request for hearing is not filed within ten days of issuance of a notice of intent to deny the application for failure to complete the application, the application shall be dismissed without prejudice by the commission's designee.

(2) The commission's designee shall make a written recommendation as to whether the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility comply with the rules and safety standards of the commission if the application is not protested, by the latter of the 14th day after the end of the 30-day protest period or the 14th day after the day notice of a complete application is issued.

(3) If, pursuant to subsection (i) of this section, a hearing is held, the staff may introduce evidence relating to the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility.

(4) In determining whether or not the materials to be used in and method of construction and operation of a proposed sour gas pipeline facility comply with the rules and safety standards of the commission, relevant provisions of §3.36 and §3.65 of this title (relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas, and pipeline permits required, respectively) shall be considered. If applicable, §§7.70 - 7.73 of this title (relating to natural gas pipeline safety rules) and §§7.80 - 7.87 of this title (relating to hazardous liquids pipeline safety rules) shall also be considered.

(5) If no affected person files a protest with the commission by the 30th day after the date notice of application was published, the commission's designee shall either make a written recommendation that the permit be issued, that the permit be granted subject to specific conditions required to ensure compliance with applicable laws and regulations, or that the permit be denied. If the commission's designee recommends that the permit be conditionally granted or be denied, the reasons for such recommendation shall be explained. If the commission's designee recommends that the application be conditionally granted or be denied, the applicant shall have a right to a hearing upon written request received no later than 15 days after the date of issuance of notice of conditional grant or denial.

(i) Hearing.

(1) A hearing shall be convened to consider an application for a sour gas pipeline construction permit if:

(A) a protest is timely filed by an affected person;

(B) a request is timely filed by the applicant; or

(C) the commission so elects on its own motion.

(2) The Office of General Counsel shall assign an examiner who shall conduct a hearing in accordance with the procedural requirements of Texas Government Code, Chapter 2001 (the Administrative Procedure Act), and Chapter 1 of this title (relating to the general rules of practice and procedure).

(3) The commission shall convene a hearing not later than the 60th day after a protest is filed, the applicant submits a request for hearing, or the commission gives notice of intent to convene a hearing on its own motion. If the application is not complete as of the date the request for hearing is filed or notice of hearing issued, the 60-day time period for convening a hearing shall not begin to run until such time as notice of a complete application is issued unless the hearing is held pursuant to the provisions of subsection (h)(1). If the hearing is held pursuant to the provisions of subsection (h)(1), the hearing will be held within 60 days of receipt of a request for hearing.

(4) In any hearing convened to consider an application, the applicant has the burden of showing that the materials to be used in and method of construction and operation comply with the applicable rules and safety standards adopted by the commission.

(j) Order.

(1) An order approving an application shall include a finding that the materials to be used in and method of construction and operation of the facility comply with the applicable rules and safety standards adopted by the commission. If an application meets all the requirements of §3.65 of this title, relating to pipeline permits required, including the requirements of §3.36 of this title, relating to oil, gas, or geothermal resource operation in hydrogen sulfide areas, the order may approve the certificate of compliance (Form H-9) or grant the pipeline permit or both.

(2) An order denying an application shall state the reason or reasons for the denial.

(3) In the case of an application for which a hearing is conducted, the commission will render a decision not later than the 60th day after the date on which the hearing is finally closed.

(4) If no hearing is held on an application, the commission will render a decision as soon as practicable but not later than the 60th day after the staff prepares its written recommendation in accordance with subsection (h)(2) and (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 April 11, 2000.

TRD-200002591
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: May 1, 2000
Proposal publication date: February 25, 2000
For further information, please call: (512) 475-1295

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TITLE 19. EDUCATION

Part 7. STATE BOARD FOR EDUCATOR CERTIFICATION

Chapter 230. PROFESSIONAL EDUCATOR PREPARATION AND CERTIFICATION

Subchapter U. ASSIGNMENT OF PUBLIC SCHOOL PERSONNEL

19 TAC §230.601

The State Board for Educator Certification (SBEC) adopts an amendment to Subchapter U, §230.601, concerning Assignment of Public School Personnel without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 495) and will not be republished.

The adopted amendment is necessary to accomplish the following:

Remove the Educational Secretary Certificate from the inventory of available certificates.

Delete the requirements for assignment to the position of educational secretary.

Remove the educational secretary from the list of positions defining an educator.

The effect of the adopted amendment will be to eliminate certification for educational secretaries.

The Texas Education Code authorizes the Board to certify public school educators. Since educational secretaries are not educators, the Board has no authority to certify educational secretaries.

SBEC will no longer issue certificates for educational secretaries. Individuals already certified as educational secretaries will keep their certificates, but the certificates will no longer be necessary for employment as an educational secretary.

In formulating this amendment, the Board considered the recommendations of its Advisory Committee on Educator Certificates, which recommended elimination of educational secretary certificates. Before the rule was proposed, the Board considered to the public testimony of representatives of the Texas Educational Secretaries Association (TESA), which favored continued certification of educational secretaries. But in reviewing the relevant provisions of the Education Code, the Board decided SBEC lacked proper authority to regulate educational secretaries.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Education Code (TEC), §21.041(b)(2), which requires the State Board for Educator Certification to propose rules that specify the classes of certificates offered.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2000.

TRD-200002651
Pamela B. Tackett
Executive Director
State Board for Educator Certification
Effective date: May 4, 2000
Proposal publication date: January 28, 2000
For further information, please call: (512) 469-3011

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TITLE 22. EXAMINING BOARDS

Part 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

Chapter 661. GENERAL RULES OF PROCEDURES AND PRACTICES

Subchapter D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §661.45

The Texas Board of Professional Land Surveying adopts an amendment to §661.45, concerning examinations, without changes to the proposed text as published in the March 17,

2000, issue of the *Texas Register* (25 TexReg 2287) and will not be republished.

The section is adopted to bring the section into conformance with national testing standards.

The following comment was received:

"The original rule had the term "intent to compromise the confidentiality of the examination", which I interpreted as wholesale copying of the exam. I have never seen anything wrong with one of my employees coming back from taking the test and asking me how I would answer a particular question. He may learn something or I might! The new language requiring the candidate from divulging any problem or solution doesn't make sense. What are you afraid of?"

The Board did not alter the rule in response to the comment.

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 17, 2000.

TRD-200002658
Sandy Smith
Executive Director
Texas Board of Professional Land Surveying
Effective date: May 7, 2000
Proposal publication date: March 17, 2000
For further information, please call: (512) 452-9427

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TITLE 25. HEALTH SERVICES

Part 1. TEXAS DEPARTMENT OF HEALTH

Chapter 157. EMERGENCY MEDICAL CARE

The Texas Department of Health (department) adopts the repeal of §§157.1 - 157.3, 157.11 - 157.14, 157.16 - 157.24, 157.32 - 157.35, 157.41 - 157.47, 157.51; 157.53, 157.61 - 157.64, 157.101, and 157.121 - 157.128 and new rules 157.1 - 157.3, 157.11 - 157.14, 157.16, 157.33, 157.36, 157.37, 157.43, 157.44, 157.122 - 157.123, 157.125, and 157.128 concerning emergency medical services (EMS) and trauma systems development. New sections 157.2 - 157.3, 157.11 - 157.14, 157.16, 157.33, 157.36 - 157.37, 157.43 - 157.44, 157.122 - 157.123, 157.125, and 157.128 are adopted with changes to the proposed text as published in the October 29, 1999, issue of the *Texas Register* (24 TexReg 9534). The repeal of §§157.1 - 157.3, 157.11 - 157.14, 157.16 - 157.24, 157.32 - 157.35, 157.41 - 157.47, 157.51, 157.53, 157.61 - 157.64, 157.101, and 157.121 - 157.128 and new §157.1 are adopted without changes and therefore will not be republished.

The repeal of §157.38, and §157.129, the amendment to §157.40, and new §§157.32, 157.34 and 157.42 which were simultaneously proposed in the October 29, 1999, issue of the *Texas Register*, are being withdrawn from consideration for permanent adoption.

The department adopts new rules concerning purpose; definitions; processing EMS provider licenses and applications for EMS personnel certification and licensure; requirements for an EMS provider license; rotor-wing air ambulance operations; fixed-wing air ambulance operations; requirements for first responder organization registration; emergency suspension, suspension, probation, revocation or denial of a provider license; criteria for denial and disciplinary actions for EMS personnel and voluntary surrender of a certificate or license; certification or licensure of persons with criminal backgrounds; course coordinator certification; and EMS instructor certification.

The department also adopts new rules concerning trauma service areas; regional EMS/trauma systems; requirements for trauma facility designation; and denial, suspension and revocation of trauma facility designation.

All commenters were not against the rules in their entirety, however they expressed concerns, asked questions and suggested recommendations for change as discussed in the summary of comments. Twelve commenters at the public hearing were in favor of sending the rules through the process with no changes to the text. The following comments were received during the 90-day comment period:

Comment: Concerning §157.2(9), two commenters suggested that the definition of Basic (Level IV) Trauma Facility was too narrow.

Response: The department agrees in part and has removed the word "all" from this section and from the heading section §157.125(t).

Comment: Concerning §157.2(13), three commenters suggested that the definition of Basic Trauma Facility be changed to require that an EMS provider not utilize predetermined triage criteria, but to call the physician on staff or on call at the nearest hospital before that hospital is bypassed to take a patient to another hospital.

Response: The department agrees in part and has added language that requires local physician input into the development of predetermined triage criteria and review of the criteria through the regional system performance improvement process.

Comment: Concerning §157.2(42), two commenters opposed language in the definition regarding industrial ambulances. Both suggested referencing Texas Transportation Code, Chapter 541, §201.

Response: The department agrees and has made the appropriate change.

Comment: Concerning §157.2(47), one commenter suggested that in the definition of major trauma patient, the word "designated" be removed because non-designated trauma facilities may also be capable of treating major trauma patients.

Response: The department agrees because the word "designated" is redundant in the definition - according to the enacting legislation, a hospital is not a trauma facility unless designated by the department. The wording has been corrected in this section and in §157.2(63).

Comment: Concerning §157.2(47), one commenter suggested that in the definition of "major trauma patient," the word

"retrospectively" be removed because appropriateness of triage should not be based on retrospective identification.

Response: The department agrees in part and has added clarifying language to this section and §157.2(63) that the injury severity score may be used to evaluate of the appropriateness of triage retrospectively through an individual trauma care provider's and/or a regional performance improvement program.

Comment: Concerning §157.2(73), one commenter suggested that in the definition of "trauma nurse coordinator/trauma program manager" the words "the authority to positively impact care of trauma patients in all areas of the hospital" be removed because they are vague and the trauma coordinator does not need to impact care of patients once they no longer need trauma care.

Response: The department agrees in part and has changed the wording to reflect that the trauma nurse coordinator/trauma program manager should be able to positively impact trauma care of trauma patients.

Comment: Concerning §157.2(74), one commenter suggested that in the definition of "trauma patient" the words "trauma facility" be replaced by "acute care facility" because certain trauma patients may be treated in non-designated facilities.

Response: The department disagrees because the definition of "trauma patient" is directly out of the enacting legislation. No change was made as a result of this comment.

Comment: Concerning §157.11, one commenter recommends inclusion of a drug storage rule.

Response: The department disagrees because the issue is addressed by the Board of Pharmacy regulations. No change was made as a result of this comment.

Comment: Concerning §157.11(i)(1)(M), one commenter opposes the required Automatic External Defibrillators (AEDs) on Basic Life Support units.

Response: The department disagrees because of the availability of AEDs and the public access to AEDs. No change was made as a result of this comment.

Comment: Concerning §157.11(c), one commenter suggested that the language was ambivalent.

Response: The department agrees and has made the appropriate change to include the words "between providers".

Comment: Concerning §157.12(c)(6), one commenter recommended that the rule require submission of current FAA operational certification.

Response: The department agrees and has added that language.

Comment: Concerning §157.12(d), two commenters wanted clarification of the medical director credentials.

Response: The department disagrees. Several air medical providers are based in adjoining states and the language that the medical directors be "approved by the department" is sufficient. No change was made as a result of this comment.

Comment: Concerning §157.13(b), two commenters wanted clarification of the medical director credentials.

Response: The department disagrees. Several air medical providers are based in adjoining states and the language that the medical directors be "approved by the department" is sufficient. No change was made as a result of this comment.

Comment: Concerning §157.13(d)(4), one commenter recommended that the rule require submission of the provider's current Federal Aviation Air Taxi and Commercial Operator Certification.

Response: The department agrees and has added that language.

Concerning §157.14, the following comments were received from one commenter:

Comment: Concerning §157.14, one commenter recommends charging all volunteers a fee for administrative purposes.

Response: The department disagrees because fees and volunteer exemptions are mandated by statute. No change was made as a result of this comment.

Comment: Concerning §157.14, one commenter opposes the requirement that the department be advised of addition or deletion of staff except at the time of renewal of the license.

Response: The department disagrees because it is not required. No change was made as a result of this comment.

Comment: Concerning §157.14(a)(2) and (b)(5)(A), the commenter suggested that we use the word "members" which would include paid or volunteer first responder personnel instead of "employees and/or members."

Response: The department agrees with the need for a change but has changed the word to "personnel" to be consistent with the other uses of that terminology in the rule.

Comment: Concerning §157.14(b)(2), the commenter suggested that the personnel list include the Social Security number and certification level for more complete information.

Response: The department agrees and has made the change for clarity.

Comment: Concerning §157.14(b) and (b)(5)(B), the commenter suggested that "candidate" for registration should be "applicant".

Response: The department agrees and has made the change for clarity.

Comment: Concerning §157.14(c)(1), the commenter suggested that patients are "treated" not always "stabilized" by First Responder personnel.

Response: The department agrees and has changed the wording for clarity.

Comment: Concerning §157.14(c)(1), the commenter felt the agreement should be approved by the responsible person for the "First Responder Organization" not the first responder.

Response: The department agrees and has changed the wording for clarity.

Comment: Concerning 157.14(c)(2)(C), one commenter opposes the requirement for availability schedules.

Response: The department disagrees because the transporting provider should be informed of its First Responders' availability. No change was made as a result of this comment.

Comment: Concerning §157.14(d)(2), one commenter opposes the requirement for individual identification.

Response: The department disagrees because all persons rendering emergency care should be identified to the patient. No change was made as a result of this comment.

Comment: Concerning §157.14(d)(6), the commenter suggested that first responder vehicles do not always belong to the First Responder Organization, so proof of first responder registration should be carried in vehicles "used or operated" by the first responder.

Response: The department agrees and has modified the language.

Note: Due to the significant controversy surrounding the examination requirement for personnel recertification in §157.33(j), and because of the importance of the balance of the proposed rule to establishing certification criteria, including fees and other statute-mandated provisions, staff has deleted the proposed language in subsection (j) and has replaced it with language identical to that contained in the current rule subsection (j) pertaining to recertification.

Comment: Seventy three commenters oppose the reinstatement of the pass/fail requirement on the personnel recertification examination in §157.33(j).

Response: The department recognizes that conflicts between the personnel opposing the requirement and the physician medical directors who are in favor of the requirement will not be resolved in sufficient time to meet the rule submission deadline for the Board of Health meeting and has deleted the controversial section (j) and has replaced it with language identical to that contained in the current rule subsection (j) pertaining to recertification.

Comment: Thirteen commenters are in favor of the reinstatement of the pass/fail requirement on the personnel recertification examination in §157.33(j).

Response: The department recognizes that conflicts between the personnel opposing the requirement and the physician medical directors who are in favor of the requirement will not be resolved in sufficient time to meet the rule submission deadline for the Board of Health meeting and has deleted the controversial section (j).

Comment: Two commenters oppose the requirement for repeating a training course in §157.33(e)(2) following failure of a second retest.

Response: The department disagrees. Currently, only one retest attempt is allowed under the rules. The proposed rule provides for three attempts to successfully complete the credentialing examination. No change was made as a result of this comment.

Comment: Two commenters oppose the increase in late fees as proposed in §157.33(k)(2).

Response: The department disagrees. The increase in late fees is established by statute. No change was made as a result of this comment.

Comment: Two commenters oppose the elimination of the 90-day extension of certification past the expiration date.

Response: The department disagrees. The extension of certification is not a provision of the statute. No change was made as a result of this comment.

Comment: Concerning §157.123, two commenters indicated support for the rule as proposed.

Response: No change was made as a result of this comment.

Comment: Concerning §157.123, two commenters would like to see the Regional Advisory Councils (RACs) more specifically defined as to authority, responsibilities, conduct of business, voting, etc. They went on to express concern that there is no mechanism for assuring that state monies directed to and through the RACs are spent appropriately.

Response: The department disagrees because the RACs cover areas that are so diverse in geographic size, population, and numbers and levels of trauma care providers that defining a specific organizational structure that would meet the needs of all twenty-two Trauma Service Areas would be extremely difficult, which is why they have been allowed to develop a structure that meets the needs of their area. Additionally, staff do evaluate complaints regarding these issues and conduct on-site visits at RAC meetings, providing feedback to the RACs on the conduct of their business. In regards to state funding being directed to and through the RACs, the state will have a contract with each RAC for each different source of funding, which will define the appropriate uses of the funds and require specific reporting as to how all monies are spent. In addition, the RACs will be subject to audit regarding the use of state funds. No change was made as a result of these comments.

Comment: Concerning §157.123(b)(1)(E), one commenter suggested that the wording was vague and therefore not meaningful.

Response: The department agrees and has deleted and added language to clarify the meaning of the section.

Comment: Concerning §157.125, ten commenters indicated support for the rule as proposed.

Response: No change was made as a result of these comments.

Comment: Concerning §157.125, one commenter suggested that language be included that would allow hospitals to file a complaint regarding the conduct of a surveyor and a process for evaluation and resolution of those complaints.

Response: The department agrees and the language has been added as §157.125(d)(7).

Comment: Concerning §157.125(a)(1) and (a)(2), one commenter objected to adoption of the American College of Surgeons criteria regarding anesthesiology requirements for Level I and II trauma facilities because they conflict with state requirements.

Response: The department agrees, however, it is the nature of national standards that they may not always correspond exactly with every state's requirements. Additionally, each hospital may have a different process for meeting the essential criteria. That is why §157.125(k) allows the department to give an exception to criteria. No change was made as a result of this comment.

Comment: Concerning §157.125(d)(5), one commenter suggested that the words "from the department" be added because it is not appropriate for outside observers be allowed to accompany a survey team.

Response: The department agrees in part and has added the wording that a hospital may refuse to allow non-department observers to participate in a survey.

Comment: Concerning §157.125(g)(1), one commenter requested that the wording be clarified that only medical records, etc. specifically relevant to trauma care be reviewed during the survey process.

Response: The department agrees and the language has been added.

Comment: Concerning §157.125(p), one commenter stated a concern that the wording implies that non-designated facilities are inferior and requests that the wording be changed to state only that non-designated facilities cannot represent themselves as designated.

Response: The department disagrees because the wording is directly out of the enacting legislation. No change was made as a result of this comment.

Comment: Concerning §157.125(s) and (t), four commenters indicated support for the General and Basic Trauma Facility criteria as proposed.

Response: No change was made as a result of these comments.

Comment: Concerning §157.125(s), General Trauma Facility Standards and §157.125(s), criterium C(1), one commenter stated concern that there was no standard or standard audit filter related to diversion by trauma facilities.

Response: The department agrees and the language has been added as §157.125(s), General Trauma Facility Standard #4, §157.125(s), criterium C(1), Audit Filter #4, §157.125(t), Basic Trauma Facility Standard #4, and §157.125(t), criterium 4(a) Audit Filter ##4.

Comment: Concerning §157.125(s), criterium A(2)(b), one commenter pointed out that the wording "trauma coordinator" is not consistent with the wording in §157.2(73) or the national standards.

Response: The department agrees and the language has been corrected in §157.125(s), criterium A(2)(b) and §157.125(t), criterium 3(a).

Comment: Concerning §157.125(s), criterium A(2)(e), one commenter stated concern with requiring all trauma patients to be admitted to a surgeon because less than major trauma patients may not require that level of care and because the patient's primary physician may not be notified.

Response: The department agrees. The language of criterium A(2)(e) limits the requirement of admission to an appropriate surgeon to major and severe trauma patients. Additionally, criterium A(6)(b) states that it is essential that a patient's primary care physician be notified. No change was made as a result of this comment.

Comment: Concerning §157.125(s), criterium A(5)(a), one commenter pointed out that national standards require orthopedic surgery in Level III trauma facilities and the proposed criteria do not.

Response: The department agrees in part and has added the language that orthopedic surgery is required in lead facilities.

Comment: Concerning §157.125(s), criterium A(5)(a), one commenter stated that encouraging orthopedic surgeons and neurosurgeons to be credentialed the Advanced Trauma Life Support (ATLS) course is unrealistic and does not improve care.

Response: The department disagrees because the criterium is desired not essential, therefore, if the hospital does not meet it, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(s), criterium A(5)(a) and §157.125(t), criterium 2(a)(1), one commenter suggested that the term anesthesia care team be defined to assure that CRNAs are included.

Response: The department disagrees because the anesthesia care team is defined and credentialed by the hospital. No change was made as a result of this comment.

Comment: Concerning §157.125(s), criterium B(4)(b), one commenter stated that requiring a physician credentialed in critical care to be available in the hospital 24 hours per day is unrealistic for a Level III trauma facility.

Response: The department disagrees because the criterium allows for that physician to come from anywhere in the hospital, including the emergency department. No change was made as a result of this comment.

Comment: Concerning §157.125(s), criterium A(6)(a) and §157.125(t), criterium 2(a)(2)(b), one commenter supported and multiple commenters objected to the requirement for board-certified emergency physicians at Level III and Level IV trauma facilities to be credentialed in the ATLS course. Additionally, concerning §157.125(t), criterium 2(a)(2)(b), one commenter requested that the requirement for physicians covering emergency medicine at Level IV trauma facilities to be credentialed in the ATLS course be changed from essential to desired.

Response: The department agrees in part and has changed the requirement so that board- certified emergency physicians in Level III and Level IV trauma facilities do not have to meet this criterium unless they participated in the treatment of less than 10 major or severe trauma patients in the previous year and that there shall be/should be a credentialing program for emergency physicians in Level III/Level IV trauma facilities, respectively.

Comment: Concerning §157.125(t), one commenter requested assurance that all criteria currently specified as desired not be changed to essential in the future.

Response: The department agrees in that changes to the criteria can only be made through the rule process, which includes the opportunity for stakeholder input. No change was made as a result of this comment.

Comment: Concerning §157.125(t), one commenter was concerned because there is no reference to General Surgery in the Basic Trauma Facility Criteria.

Response: The department disagrees in that it would be extremely rare for most major and severe trauma patients to receive surgery at a Level IV trauma facility. Section 157.125(t) Basic Trauma Facility Standard #9 refers to the expectation that major and severe patients who are not transferred from a Level IV facility within two hours should receive the same level of care as the highest available in the Trauma Service Area. Additionally, all major and severe trauma patients who receive surgery at a Level IV trauma facility should be reviewed

for quality and appropriateness of care as outlined by Basic Trauma Facility Standard Audit Filters #13 and #15. No change was made as a result of this comment.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #1, one commenter suggested changing the wording from requiring a Level IV trauma facility to participate on "its" regional system to "a" regional system because this would allow a hospital to receive permission to participate on a system that it is not assigned.

Response: The department agrees in part in that it may give approval for a hospital to participate in a different system, however, in that case it would be that hospital's system. No change was made as a result of this comment.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #5, one commenter suggested eliminating the words "severe and major" because Level IV hospitals also receive non-critical patients and the word "team" because it is not well-defined.

Response: The department disagrees because the emphasis of designation is how a hospital handles the critical/potentially critical (severe and major) trauma patients. Additionally, the hospital is required to identify its trauma team under §157.125(t), criterium 1(b). No change was made as a result of this comment.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #7, one commenter stated that the criteria for a Level IV trauma facility do not address "treatment within the capability of the facility."

Response: The department disagrees because the Basic Trauma Facility Standards are attached to the criteria document. No change was made as a result of this comment.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #8, one commenter suggested adding the wording that indicates that disposition decisions are made by a physician and transfers initiated when medically necessary.

Response: The department agrees in part and language referring to the physician's responsibility in determining transfer has been added to §157.125(t), Basic Trauma Facility Standard #8 and §157.125(s), General Trauma Facility Standard #10.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #9, one commenter suggested substituting the word inappropriately for intentionally, because there may be some situations where a patient is not transferred because of circumstances beyond the hospital's control.

Response: The department agrees and the language has been added to §157.125(t), Basic Trauma Facility Standard #9 and §157.125(s), General Trauma Facility Standard #11.

Comment: Concerning §157.125(t), Basic Trauma Facility Standard #10, one commenter suggested that the word "internally" be added, that "quality of care" be substituted for "appropriateness of care," and that "provided by the facility" be substituted for "throughout the hospital stay."

Response: The department agrees in part and has added clarifying language to §157.125(t), Basic Trauma Facility Standard #10 and §157.125(s), General Trauma Facility Standard #13.

Comment: Concerning §157.125(t), criterium 1(a)(2), two commenters requested that the wording be changed to require only one nurse with trauma training participate in initial trauma resuscitations because it is an unrealistic expectation for a rural hospital to be required to have two such nurses.

Response: The department disagrees because the criterium is desired not essential, therefore, if the hospital does not meet it, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 1(b), one commenter requested that wording be added to specify that any written protocols should be established by the facility's medical staff.

Response: The department agrees and the language has been added to §157.125(t), criterium 1(b) and to §157.125(s), criterium A(2)(d).

Comment: Concerning §157.125(t), criterium 1(c), one commenter requested that wording be added to specify that the written plan for the acquisition of additional staff as needed should be established by the facility.

Response: The department agrees and the language has been added to §157.125(t), criterium 1(c) and §157.125(s), criterium B(5)(d).

Comment: Concerning §157.125(t), criterium 1(d)(5), one commenter requested that the wording be changed to reflect the ability to establish a central venous line rather that the piece of equipment.

Response: The department disagrees because the criteria 1(d) are a list of equipment, not procedures. Additionally, the criterium 1(d)(5) is desired not essential, therefore, if the hospital does not meet it, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criteria 1(e)(1)(b) and 1(e)(1)(c), one commenter requested that the requirements for 24 hour coverage by an in-house radiological technician and computerized tomography be removed because they are unrealistic expectations for a rural hospital.

Response: The department disagrees because the criteria are desired not essential, therefore, if the hospital does not meet them, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 2(a)(4), one commenter requested clarification on what Radiology Physician requirements need to be available.

Response: The department responds that this is up to the hospital and that this criterium is desired not essential, therefore, if the hospital does not meet it, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criteria 3(e) and (f), one commenter requested re- numbering the criteria to move 3(f) to 3(e)(3) and commented that expecting rural hospitals to have 50% of nurses caring for trauma patients to be certified in their area of specialty is unrealistic.

Response: The department disagrees because 3(e) and 3(f) relate to different educational requirements and because the criterium 3(f) is desired not essential, therefore, if the hospital does not meet it, there are no consequences. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 4(a), one commenter requested that the wording be clarified that the performance improvement program is developed by the hospital. Response: The department agrees and the clarifying language has been added to §157.125(t), criterium 4(a) and §157.125(s), criterium C(1).

Comment: Concerning §157.125(t), criterium 4(a), one commenter questions the inclusion of audit filters regarding admission to the hospital without evaluation by a physician, admission of patients to surgery or the ICU, and transfers to a non-designated facility because they may be medically appropriate.

Response: The department agrees that such actions by a level IV may be medically appropriate, but contends that it is the trauma performance improvement process that makes this determination. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 4(a)(2), one commenter requested that the wording be changed from requiring the hospital to audit trauma charts for "appropriateness of care" to "quality of care."

Response: The department agrees in part and has changed the wording to include quality of care in §157.125(t), criterium 4(a)(2) and §157.125(s), criterium C(5).

Comment: Concerning §157.125(t), criterium 5, one commenter would like the wording requiring trauma facilities to meet RAC requirements for participation to be removed.

Response: The department disagrees because each RAC has defined their participation requirements per the needs of the regional system. Additionally, development of a comprehensive regional system is dependent on participation by all trauma care providers. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 7, two commenters would like the requirement for a Level IV trauma facility to have a program to address the major injury problems with the hospital's service area to be changed from essential to desired.

Response: The department disagrees because prevention programs by individual trauma care providers are a critical element of a trauma system. Additionally, the criterium may be met by participating in a RAC's program. No change was made as a result of this comment.

Comment: Concerning §157.125(t), criterium 8, one commenter objects to requiring a Level IV trauma facility to pay for physicians' continuing education.

Response: The department disagrees that the wording is requiring the hospital to pay for the physicians' continuing education, only to make it available. No change was made as a result of this comment.

No comments were received on the following subsections, but the changes were made by staff to clarify the intent and accuracy of the sections.

Change: Concerning §157.37, in subsections (a), (b)(3), (c)(2)(A), and (d), the department has changed the citations of "Texas Civil Statutes, Article 6252" to "Occupations Code, Chapter 53" due to recodification of the statutes. Other minor changes were made to clarify the intent and improve the accuracy of the wording regarding investigations of criminal history of EMS personnel.

Change: Concerning §157.3(b)(1) and (2), the wording was changed because it was redundant.

Change: Concerning §157.11(l)(4), the wording was changed to reflect withdrawal of §157.34 from adoption.

Change: Concerning §157.16(e)(4), (5), and (6), the numbering was corrected from the incorrect numbering in the proposed rule.

Change: Concerning §157.36(b)(21), language was changed to broaden the scope of reporting obligations.

Change: Concerning §157.44(b)(4), language was included to exempt volunteer instructors from fees.

Change: Concerning §157.37(c)(3)(G), this new paragraph has been added to strengthen the list of offenses which may be considered and reviewed in relation to certification and licensure of EMS personnel.

Change: Concerning 157.37(d), wording was changed to clarify the department position on conduct of EMS personnel with regard to criminal history evaluation.

Change: Concerning §157.43(d)(1), the wording was changed to allow exemption of a fee for volunteers if they receive no compensation for coordinating courses or programs.

Change: Concerning §157.43(d)(8), the wording was changed for clarification. A one- year limit was added, retesting was allowed and a retest fee was specified. Requirements for certification were specified if the requirements were not completed within the one-year period after course completion.

Change: Concerning §157.43(e)(1), wording was added to allow an exemption of a fee for volunteers if they receive no compensation for coordinating training courses.

Change: Concerning §157.43(e)(9), wording was edited for clarity and a one-year limit was added. Allowance for a retest and a retest fee was added was added. If the requirements for certification are not completed within one year, the new requirements are added to the section.

Change: Concerning §157.43(e)(10), the wording for the requirements for a basic coordinator applying for advanced coordinator certification has been added for clarity.

Change: Concerning §157.43(j)(3), clarifying language has been added to the paragraph to prevent stacking of certification periods.

Change: Concerning §157.43(l), reference to the late fee and reference to §157.33 were eliminated.

Change: Concerning §157.43(l), the paragraph was reordered and clarifying language for late recertification has been added.

Change: Concerning §157.44(f)(3), wording has been added to clarify the requirements and to prevent stacking of certification periods.

Change: Concerning §157.44(h), new paragraph (h) has been added from paragraph (g) to clarify the requirements for recertification.

Change: Concerning §157.122, since proposal of the rule Tyler county has re-aligned from Trauma Service Area-R to Trauma Service Area-H. The language has been corrected in (c)(8) and (c)(18).

Change: Concerning §157.125, performance improvement is the current verbiage for quality management or improvement activities, therefore the language has been corrected in (g) (1), (r), (t)criterium 1(e)(2)(e), (t)criterium 2(a)(2)(c), (t)criterium 4, (t)criterium 4(a), (t) criterium 4(a)(4), and (t)criterium 8.

Change: Concerning §157.125(r), the citation regarding Open Records was changed after recodification of the statute.

Change: Concerning §157.128(a)(11), the citation regarding Occupation Code was changed after recodification of the statute.

Change: Concerning §157.128(c)(1), the word postmark was removed for consistency.

The commenters were the Texas Heart Association, Heart of Texas Regional Advisory Council, Texas Ambulance Association, Texas Association of Nurse Anesthetists, Texas College of Emergency Physicians, Texas Organization of Rural and Community Hospitals, Texas Trauma Coordinators Forum, Arlington Memorial Hospital, Baylor College of Medicine, Ben Taub General Hospital, Christus St. Joseph Hospital, Los Colinas Medical Center, Memorial Health System, Memorial Hermann Southeast Hospital, Memorial Hermann Southwest Hospital, Memorial Hermann The Woodlands Hospital, Methodist Healthcare System, North Hills Hospital, Permian General Hospital, Questcare, Republic Emergency Services, Richards Memorial Hospital, Sabine County Hospital, St. Joseph Regional Health Center, Southwest Texas Emergency Physicians Management Service Association, Team Health Southwest, Texas Tech University Health Sciences Center at El Paso, Texoma Medical Center, Third Coast Emergency Physicians, United Regional Health Care System, University of North Texas Health Science Center at Fort Worth, University of Texas Health Science Center at San Antonio, University of Texas Southwestern Medical Center at Dallas, and department staff. In addition, numerous individuals commented. All commenters were not for or against the rules in their entirety, however they expressed affirmatory comments, concerns, asked questions, and/or suggested recommendations for change as discussed in the summary of comments.

Subchapter A. EMERGENCY MEDICAL SERVICES - PART A

25 TAC §§157.1 - 157.3

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2000.

TRD-200002566
Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 1, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 458-7236

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25 TAC §§157.1 - 157.3

The new rules are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§157.2. Definitions.

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

(1) Abandonment - Leaving a patient without medical care once patient contact has been established, unless emergency medical services personnel are following a physician directive or the patient signs a release; turning the care of a patient over to an individual of lesser training when advanced treatment modalities have been initiated to include, but not limited to, IVs, intubation, and drug therapy.

(2) Accreditation - Formal recognition by a national association of a provider's service or an education program based on voluntarily met standards established by that association.

(3) Act - Emergency Medical Services Act, Health and Safety Code, Chapter 773.

(4) Advanced life support (ALS) - Emergency prehospital or interfacility care that uses invasive medical acts. The provision of advanced life support shall be under the medical supervision and control of a licensed physician.

(5) Advanced life support (ALS) vehicle - A vehicle that is designed for transporting the sick and injured and that meets the requirements of a basic life support vehicle and has sufficient equipment and supplies for providing intravenous therapy and endotracheal or esophageal intubation or both.

(6) Air ambulance provider - A person who operates/leases a fixed-wing or rotor-wing air ambulance aircraft, equipped and staffed to provide a medical care environment on-board appropriate to the patient's needs. The term air ambulance provider is not synonymous with and does not refer to the Federal Aviation Administration (FAA) air carrier certificate holder unless they also maintain and control the medical aspects that are consistent with EMS provider licensure.

(7) Basic life support (BLS) - Emergency prehospital or interfacility care that uses noninvasive medical acts. The provision of basic life support shall be under the medical supervision and control of a licensed physician.

(8) Basic life support (BLS) vehicle - A vehicle that is designed for transporting the sick or injured and that has sufficient equipment and supplies for providing basic life support.

(9) Basic trauma facility - A hospital designated by the department as having met the criteria for a Level IV trauma facility as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation). Basic trauma facilities provide resuscitation, stabilization, and arrange for appropriate transfer of major and severe trauma patients to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics

for health care professionals and the public, and implement targeted injury prevention programs.

(10) Board - The Texas Board of Health.

(11) Bureau - The Bureau of Emergency Management of the Texas Department of Health.

(12) Bureau chief - The chief of the Bureau of Emergency Management.

(13) Bypass - Direction given to a prehospital emergency medical services unit, by direct/on-line medical control or predetermined triage criteria, to pass the nearest hospital for the most appropriate hospital/trauma facility. Bypass protocols should have local physician input into their development and should be reviewed through the regional performance improvement process.

(14) Candidate - An individual who is requesting emergency medical services personnel certification or licensure, recertification or relicensure from the Texas Department of Health.

(15) Certificant - Emergency medical services personnel with current certification from the Texas Department of Health.

(16) Comprehensive trauma facility - A hospital designated by the department as having met the criteria for a Level I trauma facility as described in §157.125 of this title. Comprehensive trauma facilities manage major and severe trauma patients, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, implement targeted injury prevention programs, and conduct trauma research.

(17) Course medical director - A licensed physician approved by the department with experience in and current knowledge of emergency care who shall provide direction over all instruction and clinical practice required in EMS training courses.

(18) Credit hour - Continuing education credit unit awarded for successful completion of a unit of learning activity as defined in §157.32 of this title (relating to EMS Education Program and Course Approval).

(19) Critically injured person - A person suffering major or severe trauma, with severe multi system injuries or major unisystem injury; the extent of the injury may be difficult to ascertain, but which has the potential of producing mortality or major disability.

(20) Department - The Texas Department of Health.

(21) Designation - A formal recognition by the department of a hospital's trauma care capabilities and commitment.

(22) Diversion - A procedure put into effect by a trauma facility to insure appropriate patient care when that facility is unable to provide the level of care demanded by a trauma patient's injuries or when the facility has temporarily exhausted its resources.

(23) Emergency call - a telephone call or other similar communication from a member of the public, as part of a 9-1-1 system or other emergency access communication system, made to obtain emergency medical services.

(24) Emergency care attendant (ECA) - An individual who is certified by the department as minimally proficient to provide emergency prehospital care by providing initial aid that promotes comfort and avoids aggravation of an injury or illness.

(25) Emergency medical services (EMS) - Services used to respond to an individual's perceived need for immediate medical care and to prevent death or aggravation of physiological or psychological illness or injury.

(26) Emergency medical services (EMS) operator - a person who, as an employee of a public agency, as that term is defined by Health and Safety Code, §771.001, receives emergency calls.

(27) Emergency Medical Service Administrator - The principal executive manager of an emergency medical service organization who is responsible for the non-medical operations, staffing, policies and procedures, and overall management of the service.

(28) Emergency medical services and trauma care system - An arrangement of available resources that are coordinated for the effective delivery of emergency health care services in geographical regions consistent with planning and management standards.

(29) Emergency medical services personnel -

(A) emergency care attendant (ECA);

(B) emergency medical technician (EMT);

(C) emergency medical technician-intermediate (EMT-I); or

(D) emergency medical technician-paramedic (EMT-P).

(30) Emergency medical services (EMS) provider - A person who uses, operates or maintains EMS vehicles and EMS personnel to provide EMS. See §157.11 of this title (relating to Requirements for an EMS Provider License) regarding fee exemption.

(31) Emergency medical services (EMS) volunteer provider - An EMS which has at least 75% of the total personnel as volunteers and is a nonprofit organization. See §157.11 of this title regarding fee exemption.

(32) Emergency medical services (EMS) volunteer - EMS personnel who provide emergency prehospital or interfacility care in affiliation with a licensed EMS provider or a registered First Responder organization without remuneration, except for reimbursement for expenses.

(33) Emergency medical technician (EMT) - An individual who is certified by the department as minimally proficient to perform emergency prehospital care that is necessary for basic life support and that includes the control of hemorrhaging and cardiopulmonary resuscitation.

(34) Emergency medical technician-intermediate (EMT-I) - An individual who is certified by the department as minimally proficient in performing skills required to provide emergency prehospital or interfacility care by initiating and maintaining under medical supervision certain procedures, including intravenous therapy and endotracheal or esophageal intubation or both.

(35) Emergency medical technician-paramedic (EMT-P) - An individual who is certified by the department as minimally proficient to provide emergency prehospital or interfacility care by providing advanced life support that includes initiation and maintenance under medical supervision of certain procedures, including intravenous therapy, endotracheal or esophageal intubation or both, electrical cardiac defibrillation or cardioversion, and drug therapy.

(36) Emergency medical services vehicle-

(A) basic life support vehicle;

(B) advanced life support vehicle;

(C) mobile intensive care unit (MICU);

(D) MICU rotor wing and MICU fixed wing air medical vehicles; or

(E) specialized emergency medical service vehicle.

(37) Emergency prehospital care - Care provided to the sick and injured before or during transportation to a medical facility, including any necessary stabilization of the sick or injured in connection with that transportation.

(38) Facility triage - The process of assigning patients to an appropriate trauma facility based on injury severity and facility availability.

(39) General trauma facility - A hospital designated by the department as having met the criteria for a Level III trauma facility as described in §157.125 of this title. General trauma facilities provide resuscitation, stabilization, and assessment of injury victims and either provide treatment or arrange for appropriate transfer to a higher level trauma facility, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.

(40) Governmental entity - A county, a city or town, a school district, or a special district or authority created in accordance with the Texas Constitution, including a rural fire prevention district, an emergency services district, a water district, a municipal utility district, and a hospital district.

(41) Health care entity - A first responder, EMS provider, physician, nurse, hospital, designated trauma facility, or a rehabilitation program.

(42) Industrial ambulance - Any vehicle owned and operated by an industrial facility as defined in the Texas Transportation Code, Chapter 541, §201, and used for initial transport or transfer of company employees who become urgently ill or injured on company premises to an appropriate medical facility.

(43) Interfacility care - Care provided while transporting a patient between medical facilities.

(44) Lead trauma facility - A trauma facility that has made an additional commitment to its trauma service area. This commitment, which usually is offered by the highest level of trauma facility in a given trauma service area, includes receipt of major and severe trauma patients transferred from lower level trauma facilities. It also includes on-going support of the regional advisory council and the provision of regional outreach, prevention, and trauma educational activities to all trauma care providers in the trauma service area regardless of health care system affiliation.

(45) Licensee - An individual who holds a current paramedic license from the Texas Department of Health (department); an individual who uses, maintains or operates EMS vehicles and EMS personnel to provide EMS and who holds an EMS provider license from the department.

(46) Major trauma facility - A hospital designated by the department as having met the criteria for a Level II trauma facility as described in §157.125 of this title. Major trauma facilities provide similar services to the Level I trauma facility although research and some medical specialty areas are not required for Level II facilities, provide ongoing educational opportunities in trauma related topics for health care professionals and the public, and implement targeted injury prevention programs.

(47) Major trauma patient - A person with injuries, or potential injuries, severe enough to benefit from treatment at a trauma facility. These patients may or may not present with alterations in vital signs or level of consciousness or obvious significant injuries (see severe trauma patient), but have been involved in an incident which results in a high index of suspicion for significant injury and/or disability. Co-morbid factors such as age and/or the presence of significant medical problems should also be considered. These patients should initiate a system's or health care entity's trauma response, including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an injury severity score of 9 or above.

(48) Medical control - The supervision of prehospital emergency medical service providers by a licensed physician. This encompasses on-line (direct voice contact) and off-line (written protocol and procedural review).

(49) Medical Director - The licensed physician who provides medical supervision to the EMS personnel of a licensed EMS provider under the terms of the Medical Practices Act (Chapter 6, Texas Civil Statutes 4495b) and rules promulgated by the Texas State Board of Medical Examiners. Also may be referred to as off-line medical control.

(50) Medical oversight - The assistance and management given to health care providers and/or entities involved in regional EMS/trauma systems planning by a physician or group of physicians designated to provide technical assistance.

(51) Medical supervision - Direction given to emergency medical services personnel by a licensed physician under the terms of the Medical Practice Act, (Texas Civil Statutes, Chapter 6, Article 4495b) and rules promulgated by the Texas State Board of Medical Examiners pursuant to the terms of the Medical Practice Act.

(52) Mobile intensive care unit (MICU) - a vehicle that is designed for transporting the sick or injured and that meets the requirements of the advanced life support vehicle and has sufficient equipment and supplies to provide cardiac monitoring, defibrillation, cardioversion, drug therapy, and two-way communication.

(53) Operational policies - Policies and procedures which are the basis for the operation of EMS include, but are not limited to such areas as vehicle maintenance, proper maintenance and storage of supplies, equipment, medications, and patient care devices; complaint investigation, multicasualty incidents, hazardous materials; but do not include personnel or financial policies.

(54) Person - An individual, corporation, organization, government, governmental subdivision or agency, business, trust, partnership, association, or any other legal entity.

(55) Prehospital triage - The process of identifying medical/injury acuity or the potential for severe injury based upon physiological criteria, injury patterns, and/or high-energy mechanisms and transporting patients to a facility appropriate for their medical/injury needs. Prehospital triage for injury victims is guided by the prehospital triage protocol adopted by the regional advisory council (RAC) and approved by the department.

(56) Quality management - Quality assurance, quality improvement, and/or performance improvement activities.

(57) Regional EMS/trauma system - An EMS and trauma care system that has been developed by a RAC in a multi-county area and has been recognized by the department. The Texas Trauma system is a network of the regional EMS/trauma systems.

(58) Regional medical control - Physician supervision for prehospital emergency medical services (EMS) providers in a given trauma service area or other geographic area intended to provide standardized oversight, treatment, and transport guidelines, which

should, at minimum, follow the regional advisory council's regional EMS/trauma system plan components related to these issues.

(59) Recertification - The procedure for renewal of emergency medical services certification.

(60) Reciprocity - The recognition of certification or privileges granted to an individual from another state.

(61) Relicensure - The procedure for renewal of a paramedic license as described in §157.40 of this title (relating to Paramedic Licensure); the procedure for renewal of an EMS provider license as described in §157.11 of this title.

(62) Response ready - When an EMS vehicle is equipped and staffed in accordance with §157.11 of this title (relating to Requirements for a Provider License) and is immediately available to respond to any emergency call.

(63) Severe trauma patient - A person with injuries or potential injuries that require treatment at a tertiary trauma facility. These patients may be identified by an alteration in vital signs and/or level of consciousness or by the presence of significant injuries and shall initiate a system's and/or health care entity's highest level of trauma response including prehospital triage to a designated trauma facility. For performance improvement purposes, these patients are also identified retrospectively by an injury severity score of 15 or above.

(64) Shall - Mandatory requirements.

(65) Site survey - An on-site review of a trauma facility applicant to determine if it meets the criteria for a particular level of designation.

(66) Sole provider - The only licensed emergency medical service provider in a geographically contiguous service area and in which the next closest provider is greater than 20 miles from the limits of the area.

(67) Specialized emergency medical services vehicle - A vehicle that is designed for responding to and transporting sick or injured persons by any means of transportation other than by standard automotive ground ambulance or rotor or fixed wing air craft and that has sufficient staffing, equipment and supplies to provide for the specialized needs of the patient transported. This category includes, but is not limited to, water craft, off-road vehicles, and specially designed, configured or equipped vehicles used for transporting special care patients such as critical neonatal or burn patients.

(68) Specialty centers - Entities that care for specific types of trauma patients such as pediatric hospitals and burn units that have received certification, categorization, verification or other form of recognition by an appropriate agency regarding their capability to definitively treat these types of patients.

(69) Staffing plan - A document which indicates the overall working schedule patterns of EMS personnel.

(70) Standard of care - Care equivalent to what any reasonable, prudent person of like certification level would have given in a similar situation, based on local or regionally adopted standard emergency medical services curricula as adopted by reference in §157.32 of this title (relating to Emergency Medical Services Training and Course Approval).

(71) Trauma - An injury or wound to a living body caused by the application of an external force or violence, including burn injuries. Poisonings, near-drownings and suffocations, other than those due to external forces are to be excluded from this definition.

(72) Trauma facility - A hospital that has successfully completed the designation process, is capable of stabilization and/or definitive treatment of critically injured persons and actively participates in a regional EMS/trauma system.

(73) Trauma nurse coordinator/trauma program manager - A registered nurse with demonstrated interest, education, and experience in trauma care and who, in partnership with the trauma medical director and hospital administration, is responsible for coordination of trauma care at a designated trauma facility. This coordination should include active participation in the trauma performance improvement program, the authority to positively impact trauma care of trauma patients in all areas of the hospital, and targeted prevention and education activities for the public and health care professionals.

(74) Trauma patient - Any critically injured person who has been evaluated by a physician, a registered nurse, or emergency medical services personnel, and found to require medical care in a trauma facility.

(75) Trauma registry - A statewide database which documents and integrates medical and system information related to the provision of trauma care by health care entities.

(76) When in service - The period of time when an EMS vehicle is at the scene or when en route to a facility with a patient.

§157.3. Processing EMS Provider Licenses and Applications for EMS Personnel Certification and Licensure.

(a) Purpose. The purpose of this section is to set out the time periods by which the Texas Department of Health (department) processes applications for emergency medical services (EMS) provider licenses and EMS personnel certification and licensure.

(b) First time period. The first period is a time from the date of receipt of an application to the date of issuance of a written notice that the application is complete or that additional specific information is required. An appointment for the survey of an EMS provider may be in lieu of the notice of acceptance of a complete application. The time periods for each application are as follows.

(1) EMS provider licenses. The time periods are 21 days for the letter of deficiency and 45 days after completing licensure requirements for the issuance of the EMS provider license.

(2) EMS personnel certificates or licenses. The time periods are 21 days for the letter of deficiency and 45 days after testing for the issuance of EMS personnel certificate or license.

(c) Second time period. The second period is a time from the date of receipt of the last item necessary to complete the application, including survey or testing, to the date of issuance of written notice approving or denying the application. The denial time periods include notification of the proposed decision and the opportunity for an informal or formal hearing. The time periods for each application are as follows.

(1) EMS provider license.

(A) The time period for the initial letter of approval for a license is 45 days.

(B) The time period for the letter of denial for a license is 120 days. The time period includes the applicant requests for a variance from minimum standards and the review necessary for this request.

(C) The time period for the issuance of a license is 45 days.

(2) EMS personnel certificates or licenses.

(A) The time period for the letter of approval for an examination is 45 days.

(B) The time period for the letter of denial for an examination is 180 days. This time limit reflects the applicant being investigated for acceptance for examination based on a criminal conviction or statutory action under the Health and Safety Code, Chapter 773 and rules adopted thereunder.

(C) The time period for the issuance of a certificate or license is 45 days.

(d) Reimbursement of fees.

(1) In the event the application is not processed in the time periods as stated in subsections (b) and (c) of this section, the applicant has the right to request of the bureau chief of the Bureau of Emergency Management, full reimbursement of all filing fees paid in that particular application process. If the bureau chief does not agree that the established periods have been violated or finds that good cause existed for exceeding the established periods, the request will be denied.

(2) Good cause for exceeding the period established is considered to exist if:

(A) the number of applications for licenses, registrations, certifications, and permits as appropriate to be processed exceeds by 15% or more the number processed in the same calendar quarter the preceding year;

(B) another public or private entity utilized in the application process caused the delay; or

(C) other conditions existed giving good cause for exceeding the established periods.

(e) Appeal. If the request for full reimbursement authorized by subsection (d) of this section is denied, the applicant may then appeal to the commissioner of health for a resolution of the dispute. The applicant shall give written notice to the commissioner that he requests full reimbursement of all filing fees paid because his application was not processed within the adopted time period. The bureau chief shall submit a written report of the facts related to the processing of the application and good cause for exceeding the established time periods. The commissioner will make the final decision and provide written notification of his decision to the applicant and the bureau chief.

(f) Contested case hearing. If at any time during the processing of the application during the second time period, a contested case hearing becomes involved, the time periods in §1.34 of this title (relating to Time Periods for Conducting Contested Case Hearing) are applicable.

(g) Application for EMS provider license by a corporation. An applicant for an EMS provider license who is a corporation under the Texas Business Corporation Act, Texas Civil Statutes, Article 2.45, shall provide the department with an affidavit issued by the comptroller's office attesting to the applicant's good standing under the Tax Code, Texas Codes Annotated, Chapter 171; and shall comply with department requirements regarding payment of franchise taxes by corporations contracting with the department or applying for a license from the department as described in §1.161 of this title (relating to Delinquent Corporate Franchise Taxes).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: October 29, 1999
For further information, please call: (512) 458-7236

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Subchapter B. EMERGENCY MEDICAL SERVICES PROVIDER LICENSES

25 TAC §§157.11 - 157.14, 157.16 - 157.24

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Department of Health
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♦ ♦ ♦

25 TAC §§157.11 - 157.14, 157.16

The new rules are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§157.11. Requirements for an EMS Provider License.

(a) Application requirements for an Emergency Medical Services (EMS) Provider License.

(1) Candidates for an EMS provider license shall submit a completed application (application, all other required information described in a provider licensing instruction document provided by the Texas Department of Health (department) and a nonrefundable an fee) to the department.

(2) The nonrefundable fee shall be $150 for each EMS vehicle to be operated unless the license is issued for less than 12 months in which case the nonrefundable fee shall be $75 for each vehicle.

(3) If an air ambulance provider advertises in Texas and operates an air ambulance service, the provider shall be required to have a Texas EMS Provider License.

(4) A rotor-wing air ambulance provider from New Mexico, Oklahoma, Arkansas, or Louisiana may apply for reciprocal issuance of a provider license. A nonrefundable administrative fee of $250 shall accompany the application in addition to the nonrefundable fee in subsection (a)(2) of this section.

(5) Applicants who have no more than five full-time paid medical and support staff, or the full-time equivalent, and who operate with at least 75% volunteer personnel, are exempt from the payment of fees.

(b) Licenses and Designations. Candidates who meet all the criteria for licensure shall be issued a provider license. Licenses may be issued for less than two years for administrative purposes. Licensed EMS providers (providers) shall comply with all requirements of their license at all times.

(1) Licenses. Providers shall be issued a license for a specific number of vehicles. Copies of the license shall be prominently displayed in a public area of the provider's headquarters and in the patient compartment of each of the provider's vehicles.

(2) Designations. The provider will indicate to the department the number of vehicles designated at each level. Designations are not required to be dedicated to a particular vehicle. A designation at one of the following levels shall be prominently displayed in the patient compartment of each vehicle:

(A) Basic Life Support (BLS);

(B) BLS with Advanced Life Support (ALS) capability;

(C) BLS with Mobile Intensive Care Unit (MICU) capability;

(D) ALS;

(E) ALS with MICU capability;

(F) MICU;

(G) MICU Air:

(i) Rotor wing; or

(ii) Fixed wing; and

(H) specialized.

(c) Transfer of licenses and designations. Licenses and designations are not transferable between providers.

(d) Vehicles.

(1) All EMS vehicles must be adequately constructed, equipped, maintained and operated to render patient care, comfort and transportation safely and efficiently. EMS vehicles must allow the proper and safe storage and use of all required equipment, supplies and medications and must allow all required procedures to be carried out in a safe and effective manner. Unless otherwise approved by the department, ground vehicles must conform to one of the body types generally recognized as Type I, II, or III.

(2) When response-ready or in-service, EMS vehicles shall have operational two- way communication capable of contacting appropriate medical resources, and shall be in compliance with all applicable state and/or federal laws and; except for fixed wing aircraft shall have the name of the provider prominently displayed on both sides of the vehicle. Licensed providers who operate rotor or fixed wing aircraft must comply with all requirements of §157.12 of this title (relating to Rotor- wing Air Ambulance Operations) or §157.13 of this title (relating to Fixed-wing Air Ambulance Operations).

(3) Substitution, replacement and additional vehicles.

(A) If a provider substitutes or replaces a vehicle, there is no fee, but the department shall be notified within 10 days.

(B) If a provider adds a vehicle to the fleet, a nonrefundable fee is required and the department shall be notified within 10 days of the designation assigned to the vehicle.

(e) Required Minimum Staffing.

(1) BLS - when response-ready or in-service - two emergency care attendants (ECA)'s.

(2) BLS with ALS capability - when response-ready or in-service below ALS - two ECA's. Full ALS status becomes active when staffed by at least an emergency medical technician (EMT)-Intermediate and at least an EMT.

(3) BLS with MICU capability - when response-ready or in-service below MICU- two ECA's. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(4) ALS - when response-ready or in-service - one EMT-Intermediate and one EMT.

(5) ALS with MICU capability - when response-ready or in-service below MICU- one EMT-Intermediate and one EMT. Full MICU status becomes active when staffed by at least a certified or licensed paramedic and at least an EMT.

(6) MICU - when response-ready or in-service - one certified or licensed paramedic and one EMT.

(7) Specialized - when response-ready or in-service - two certified or licensed personnel, certification or licensure level determined by the type and application of the vehicle and approved by the medical director.

(8) For air ambulance staffing requirements refer to §157.12(f) of this title or §157.13(g) of this title.

(9) As justified by patient needs, providers may utilize appropriately certified and/or licensed medical personnel in addition to those which are required by their designation levels. In addition to the care rendered by the required staff, the provider shall be accountable for care rendered by any additional personnel.

(f) Protocols. The provider shall submit protocols approved by the provider's medical director identifying procedures for each EMS certification or license level utilized by the provider. Protocols shall also address the use of non-EMS certified or licensed medical personnel who, in addition to the EMS staff provide patient care on behalf of the provider and/or in the provider's EMS vehicles. Physicians, nurses, and other health care practitioners who regularly provide patient care in EMS vehicles shall be EMS certified. The protocols shall address the use of all required, additional, and specialized medical equipment carried by any EMS vehicle in the provider's fleet. Protocols shall have an effective date and an expiration date which corresponds to the effective and expiration dates of the provider's EMS license, and shall indicate specific applications including geographical area and duty status of personnel. For patient care reasons and with appropriate consideration from the medical director, a provider's protocols may be expanded or overridden by on-

line medical control, off-line medical direction or by patient-specific orders.

(g) Equipment and supplies. The provider shall submit an equipment and supply list which is approved by the medical director and which is consistent with, and fully supportive of, the protocols. The list shall specify an adequate variety of sizes and types and shall specify quantities appropriate to the provider's call volume, transport times and restocking capabilities. All equipment and supplies shall be clean and in working order. During unannounced inspections consideration will be given to equipment and supply deficiencies caused by recent or repeated EMS calls.

(h) The requirements for air ambulance equipment and supplies are listed in §157.12 (h) of this title or §157.13 (h) of this title.

(i) At least the following equipment and supplies shall be present on each in-service vehicle and on, or immediately available for, each response-ready vehicle at all times:

(1) BLS:

(A) oropharyngeal airways;

(B) portable and vehicle mounted suction;

(C) bag valve mask units, oxygen capable;

(D) portable and vehicle mounted oxygen;

(E) oxygen delivery devices;

(F) dressing and bandaging materials;

(G) rigid cervical immobilization devices;

(H) spinal immobilization devices;

(I) extremity splints;

(J) equipment to meet special patient needs;

(K) equipment for determining and monitoring patient vital signs, condition or response to treatment;

(L) medications as required by protocols;

(M) Automatic External Defibrillator (AED) or equivalent; and

(N) patient transport device capable of being secured to the vehicle.

(2) ALS or BLS with ALS capability:

(A) all required BLS equipment;

(B) advanced airway equipment; and

(C) IV equipment and supplies.

(3) MICU, BLS with MICU capability, ALS with MICU capability:

(A) all required BLS and ALS equipment; and

(B) cardiac monitor/defibrillator (in lieu of AED).

(4) In addition to medical supplies and equipment:

(A) protocols approved by the current medical director;

(B) emergency warning devices;

(C) personal protective equipment for the crew to include at least:

(i) protective, non-porous gloves;

(ii) medical eye protection;

(iii) medical respiratory protection;

(iv) medical protective gowns or equivalent; and

(v) personal cleansing supplies;

(D) sharps container;

(E) biohazard bags;

(F) fire extinguisher; and

(G) no smoking signs.

(5) As justified by specific patient needs, and when qualified personnel are available, providers may appropriately utilize equipment in addition to that which is required by their designation levels. Equipment used must be consistent with protocols and/or patient-specific orders and must correspond to personnel qualifications.

(j) National accreditation. If a provider has been accredited through a national accrediting organization approved by the department and adheres to Texas staffing level requirements, the department may exempt the provider from portions of the license process. In addition to other licensing requirements, accredited providers shall submit:

(1) an accreditation self-study;

(2) a copy of formal accreditation certificate; and

(3) any correspondence or updates to or from the accrediting organization which impact the provider's status.

(k) Subscription or Membership Services. An EMS provider who operates or intends to operate a subscription or membership program for the provision of EMS within the provider service area shall meet all the requirements for an EMS provider license as established by the Health and Safety Code, Chapter 773, and the rules adopted thereunder, and shall obtain department approval prior to soliciting, advertising or collecting subscription or membership fees. In order to obtain department approval for a subscription or membership program, the EMS provider shall:

(1) have a written authorization from the bureau chief elected official of the governmental entity for the provision of subscription emergency prehospital care within that governmental service area;

(2) submit a sample of the contract for subscription service, membership and/or the application used to enroll participants;

(3) submit a copy of all advertising used to promote the subscription service at the time of application for each license period. The EMS provider shall maintain a current file of all advertising for the service;

(4) comply with all state and federal regulations regarding billing and reimbursement for participants in the subscription service;

(5) provide evidence of financial responsibility by:

(A) obtaining a surety bond payable to the department in an amount equal to the funds to be subscribed. The surety bond must be issued by a company licensed by or eligible to do business in the State of Texas; or

(B) submitting satisfactory evidence of self insurance if the provider is a function of a governmental entity;

(6) not deny EMS to nonsubscribers or subscribers of noncurrent status;.

(7) be reviewed at least every two years when the provider license is renewed; and the subscription program may be reviewed by the department during spot inspections;

(8) furnish the names and addresses of all subscribers/members to the department at the beginning of each licensure period in a format mutually acceptable to both the department and the provider; and

(9) not offer membership nor accept members into the program who are Medicaid clients.

(l) Responsibilities of the EMS provider. During the license period the provider's responsibilities shall include:

(1) assuring that all response-ready and in-service vehicles are maintained, operated, equipped and staffed in accordance with the requirements of the provider's license;

(2) monitoring and taking appropriate action regarding the quality of patient care provided by the service;

(3) monitoring and taking appropriate action regarding the performance of all personnel involved in the provision of EMS; and ensuring that all personnel are properly certified or licensed;

(4) assuring that continuing education (CE) training is current in accordance with the requirements in §157.38 of this title (regarding Continuing Education);

(5) assuring that all personnel, when on an in-service vehicle or when on-scene, are prominently identified by name, certification or license level and provider name

(6) maintaining confidentiality of patient information;

(7) assuring that all relevant patient care information is supplied to receiving facilities upon delivery of patients;

(8) assuring that all requested patient records are made promptly available to the medical director;

(9) making available on each vehicle current protocols, current equipment and supply lists, a copy of the provider license and the correct designation;

(10) monitoring and enforcing general safety policies including at least personal protective equipment, immunizations and communicable disease exposure and emergency vehicle operation;

(11) assuring ongoing compliance with the terms of first responder agreements;

(12) assuring that all documents, reports or information provided to the department are current, truthful and correct;

(13) maintaining compliance with all applicable laws and regulations;

(14) submission of run response data upon request by department approved method; and

(15) notification of the department within 10 days if:

(A) a vehicle is substituted or replaced;

(B) a vehicle is added, with submission of the nonrefundable fee if applicable; and/or

(C) there is a change in the:

(i) number of any designation level in the fleet;

(ii) official business address;

(iii) service director;

(iv) medical director, with submission of the new agreement; and/or

(v) physical sublocation or station address.

(m) License renewal process.

(1) The department shall notify the EMS provider at least 90 days before the expiration date of the current license at the address shown in the current records of the department. It is the responsibility of the provider to notify the department of any change of address. If a notice of expiration is not received, it is the responsibility of the provider to notify the department and request license renewal application information.

(2) Providers shall submit a completed application and nonrefundable fee, if applicable, and must verify continuing compliance with the requirements of their license.

(3) If a provider has not met all requirements for a provider license, the provider may apply for a provisional license by submitting a request and, in addition to the regular nonrefundable licensure fee if applicable, a nonrefundable fee of $25. One provisional license, valid for not more than 60 days, may be granted only to prevent probable adverse impact to the health and safety of the service community. Without a provisional license, a provider may not operate if there is a lapse in time between license expiration and license renewal.

(n) Advertisements. If there are more than five paid staff, but the organization is composed of at least 75% volunteer personnel, the provider shall pay a nonrefundable fee but may continue to advertise the service as volunteer. A provider shall not advertise levels of designation or types of patient care which cannot be provided. Displays on vehicles which indicate the provider's name or the appropriate designation level of the vehicles shall not be considered advertising.

(o) Surveys. All initial candidates for a provider license shall be required to have a comprehensive survey by the department prior to the license being granted. Surveys may be conducted for cause on any licensed provider.

(p) Unannounced inspections. Randomly and/or in response to complaints, the department may conduct unannounced inspections to insure compliance of the provider license holder. Inspections may be conducted at any time, including nights or weekends. The department may review all components of provider licensure during an unannounced inspection. Violations or deficiencies may result in disciplinary action as authorized by §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License). The department may grant a reasonable period of time for the provider to correct deficiencies. If the department must reinspect the provider because of noncompliance noted during a previous inspection, the provider shall pay a nonrefundable fee of $25, if applicable.

(q) Failure to correct identified deficiencies. Failure to correct identified deficiencies within a period of time determined to be reasonable by the department or if the deficiencies are found to be repeated, the provider shall be subject to disciplinary actions in accordance with §157.16 of this title.

§157.12. Rotor-wing Air Ambulance Operations.

(a) Rotary wing aircraft (helicopters) operated by a licensed emergency medical services (EMS) provider shall be at the mobile

intensive care level. Persons or entities operating rotary wing air ambulances must direct and control the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, typically the organization in charge of the medical functions directs the combined efforts of the aviation and medical components during patient transport operations.

(b) When being used as an ambulance, the helicopter shall:

(1) be configured so that the medical personnel have adequate access to the patient in order to begin and maintain basic and advanced life support treatment;

(2) have an entry that allows loading and unloading of a patient without excessive maneuvering (no more than 45 degrees about the lateral axis and 30 degrees about the longitudinal axis); and does not compromise functioning of monitoring systems, intravenous (IV) lines, or manual or mechanical ventilation;

(3) have a supplemental lighting system in the event standard lighting is insufficient for patient care that includes:

(A) a self-contained lighting system powered by a battery pack or a portable light with a battery source; and

(B) a means to protect the pilot's night adaptation vision. (Use of red lighting or low intensity lighting in the patient care area is acceptable if not able to isolate the patient care area);

(4) have an electric power outlet with an inverter or appropriate power source of sufficient output to meet the requirements of the complete specialized equipment package without compromising the operation of any electrical aircraft equipment;

(5) have protection of the pilot's flight controls, throttles and radios from any intended or accidental interference by the patient, air medical personnel or equipment and supplies; and

(6) have an internal medical configuration located so that air medical personnel can provide patient care consistent with the scope of care of the air medical service, to include:

(A) the space necessary to ensure the patient's airway is maintained and to provide adequate ventilatory support from the secured, seat-belted position of the air medical personnel;

(B) those aircraft with gaseous oxygen systems have equipment installed so that medical personnel can determine if oxygen is on by in-line pressure gauges mounted in the patient care area. Aircraft using liquid or gaseous oxygen should have equipment installed:

(i) with each gas outlet clearly marked for identification;

(ii) with oxygen flow capable of being stopped at the oxygen source from inside the aircraft; and

(iii) so that the measurement of the liter flow and quantity of oxygen remaining is accessible to air medical personnel while in flight. All flow meters and outlets must be padded, flush mounted, or so located as to prevent injury to air medical personnel; or there shall be an operational policy stating that attendants wear helmets;

(C) hangers/hooks available to secure (IV) solutions in place or a mechanism to provide high flow fluids if needed:

(i) all IV hooks shall be padded, flush mounted, or so located as to prevent head trauma to the air medical personnel in the event of a hard landing or emergency with the aircraft; or an operational policy stating that attendants wear helmets; and

(ii) glass containers shall not be used unless required by medication specifications and properly vented;

(D) provision for medication which allows for protection from extreme temperatures if it becomes environmentally necessary; and

(E) secure positioning of cardiac monitors, defibrillators, and external pacers so that displays are visible to medical personnel.

(c) An air ambulance provider shall meet the responsibilities of EMS providers as in §157.11(l) of this title (relating to Requirements for an EMS Provider License) and in addition shall:

(1) submit proof that the rotor-wing aircraft provider carries bodily injury and property damage insurance with a company licensed to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of $1 million for injuries to, or death of, any one person arising out of any one incident or accident;

(B) the minimum amount of $3 million for injuries to, or death of, more than one person in any one accident; and

(C) the minimum amount of $500,000 for damage to property arising from any one accident;

(2) submit proof that the air ambulance provider carries professional liability insurance coverage in the minimum amount of $500,000 per occurrence, with a company licensed to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient;

(3) submit a list of all aircraft with the registration number or "N" number for the helicopters in the possession of the provider.

(4) submit a letter of agreement that all helicopters shall meet the specifications of subsection (b) of this section, if the aircraft is leased from a pool;

(5) allow visual and physical inspection of each aircraft and of the equipment to be used on each vehicle for the purpose of determining compliance with the vehicle and equipment specifications within this section; and

(6) submit a copy of current Federal Aviation Administration (FAA) operational certification.

(d) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician approved by the Texas Department of Health and in practice;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment;

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside the medical director's area of practice; and

(5) comply with the requirements in Chapter 6, Medicine, Article 4495B, Medical Practice Act, §197.3(a)(2-7) and (b).

(e) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in any administrative decision making processes that affect patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written medical policies and protocols annually.

(f) There shall be two Texas licensed/certified personnel on board the helicopter when in service. A waiver to the Texas license/certification may be granted for personnel employed by providers in New Mexico, Oklahoma, Arkansas, and Louisiana who respond in Texas and are licensed in their respective state. Staffing of vehicles shall be as follows:

(1) when responding to an emergency scene, at least one of the personnel shall be a paramedic;

(2) when responding for an inter-facility transfer, at least one of the personnel performing patient care duties shall be a certified or licensed paramedic, registered nurse or physician. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs;

(3) when responding as in paragraphs (1) and (2) of this subsection, the second person may be a certified or licensed paramedic, registered nurse, or a physician; and

(4) air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(g) Documentation of successful completion of training specific to the helicopter transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew - National Standard Curriculum or equivalent program and each attendant's qualifications shall be documented.

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers capable of being secured in the aircraft which meet the following criteria:

(A) can accommodate an adult, 6 feet tall, weighing 212 pounds. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) shall have the head of the primary stretcher capable of being elevated up to 30 degrees. The elevating section shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) shall be sturdy and rigid enough that it can support cardiopulmonary resuscitation. If a backboard or equivalent device is required to achieve this, such device will be readily available;

(D) shall have a pad or mattress impervious to moisture and easily cleaned and disinfected according to Occupational Safety and Health Administration (OSHA) bloodborne pathogen requirements; and

(E) shall have a supply of linen for each patient;

(2) adequate amounts of oxygen (for anticipated liter flow and length of flight with an emergency reserve) available for every mission;

(3) one portable oxygen tank;

(4) a back-up source of oxygen (of sufficient quantity to get safely to a facility for replacements). Back-up source may be the required portable tank if the tank is accessible in the patient care area during flight;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child, and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(6) at least one suction unit which is portable (bulb syringes or foot pump not acceptable);

(7) the following items in amounts and sizes as specified on a list signed by the medical director:

(A) IV solutions;

(B) IV catheters;

(C) endotracheal tubes;

(D) medications;

(E) any specialized equipment required in medical treatment protocols/standing orders;

(F) pressure bag;

(G) tourniquets, tape, dressings; and

(H) container appropriate to contain used sharp devices (needles, scalpels) which meets OSHA requirements;

(8) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors;

(E) pulse oximeter;

(F) external cardiac pacing device; and

(G) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable;

(9) bandages and dressings as follows:

(A) sterile dressings such as 4x4s, ABD pads;

(B) bandages such as Kerlix, Kling; and

(C) tape in various sizes;

(10) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(11) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, and each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved bio-hazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes;

(12) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(13) security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws;

(14) cardiac monitor defibrillator - DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; and

(15) quantity and type of drugs and specialized equipment as specified on the medical director's list.

§157.13. Fixed-wing Air Ambulance Operations.

(a) Fixed wing aircraft operated by a licensed EMS provider shall be at the mobile intensive care level. Persons or entities operating fixed wing air ambulances must direct and control the integrated activities of both the medical and aviation components. Although the aircraft operator is directly responsible to the Federal Aviation Administration (FAA) for the operation of the aircraft, one organization, typically the one in charge of the medical functions, directs the combined efforts of the aviation and medical components during patient transport operations.

(b) When being used as an ambulance, a fixed wing aircraft shall:

(1) be multi-engine or be a single, turbo-prop engine capable of maintaining cabin pressurization;

(2) maintain a cabin altitude consistent with patient diagnosis, condition, and destination;

(3) be equipped and kept current for instrument flight rules (IFR) flight;

(4) have a door large enough to allow a patient on a stretcher to be enplaned without excessive maneuvering or tipping of the patient which compromises the function of monitoring devices, intravenous (IV) lines or ventilation equipment;

(5) be designed or modified to accommodate at least one stretcher patient;

(6) have a lighting system which can provide adequate intensity to illuminate the patient care area and an adequate method (curtain, distance) to limit the cabin light from entering the cockpit and impeding cockpit crew vision during night operations;

(7) have an environmental system (heating and cooling) capable of maintaining a comfortable temperature at all times;

(8) have an interior cabin configuration large enough to accommodate the number of air medical personnel needed to provide care to the patient, as well as an adult stretcher in the cabin area with access to the patient. The configuration shall not impede the normal or emergency evacuation routes;

(9) have an electrical system capable of servicing the power needs of electrically powered on-board patient care equipment;

(10) have all installed and carry-on equipment secured using FAA-approved devices and methods;

(11) have sufficient space in the cabin area where the patient stretcher is installed so that equipment can be stored and secured with FAA-approved devices in such a manner that it is accessible to the air medical personnel; and

(12) have two fire extinguishers approved for aircraft use. Each shall be fully charged with valid inspection certification and capable of extinguishing type A, B, or C fires. One extinguisher shall be accessible to the cockpit crew and one shall be in the cabin area accessible to the medical crew member.

(c) An operator of aircraft in an air ambulance program shall be FAA certified as an air taxi and commercial operator (ACTO) with operation specifications allowing air ambulance operations.

(d) The fixed-wing air ambulance provider shall meet the responsibilities of EMS providers as in §157.11(l) of this title (relating to Requirements for an EMS Provider License) and shall also:

(1) submit proof that the fixed-wing aircraft provider carries bodily injury and property damage insurance with a company licensed to do business in Texas, in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the operation or use of any of the certificate holder's aircraft. Coverage amounts shall insure that:

(A) each aircraft shall be insured for the minimum amount of $1 million for injuries to, or death of, any one person arising out of any one incident or accident;

(B) the minimum amount of $3 million for injuries to, or death of, more than one person in any one accident; and

(C) for the minimum amount of $500,000 for damage to property arising from any one accident;

(2) submit proof that the air ambulance provider carries professional liability insurance coverage in the minimum amount of $500,000 per occurrence, with a company licensed to do business in Texas in order to secure payment for any loss or damage resulting from any occurrence arising out of or caused by the care or lack of care of a patient; and

(3) submit a letter of agreement that all fixed-wing aircraft shall meet the specifications of subsection (b) of this section, if the aircraft is leased from a pool; and

(4) submit a copy of current Federal Aviation Administration Air Taxi and Commercial Operator Certification.

(e) The air ambulance provider shall designate or employ a medical director who shall meet the following qualifications:

(1) be a physician approved by the Texas Department of Health and in practice;

(2) have knowledge and experience consistent with the transport of patients by air;

(3) be knowledgeable in aeromedical physiology, stresses of flight, aircraft safety, patient care, and resource limitations of the aircraft, medical staff and equipment;

(4) have access to consult with medical specialists for patient(s) whose illness and care needs are outside the medical director's area of practice; and

(5) shall comply with the requirements in Chapter 6, Medicine, Article 4495b, Medical Practice Act, §197.3 subparagraphs (a)(2)-(7) and (b).

(f) The physician shall fulfill the following responsibilities:

(1) ensure that there is a comprehensive plan/policy to address selection of appropriate aircraft, staffing and equipment;

(2) be involved in the selection, hiring, training and continuing education of all medical personnel;

(3) be responsible for overseeing the development and maintenance of a continuous quality improvement program;

(4) ensure that there is a plan to provide direction of patient care to the air medical personnel during transport. The system shall include on-line (radio/telephone) medical control, and/or an appropriate system for off-line medical control such as written guidelines, protocols, procedures, patient specific written orders or standing orders;

(5) participate in administrative decision making processes that affect patient care;

(6) ensure that there is an adequate method for on-line medical control, and that there is a well defined plan or procedure and resources in place to allow off-line medical control; and

(7) oversee the review, revision and validation of written policies and protocols annually to include a policy defining the specific instances in which a patient could be accompanied by only one attendant.

(g) There shall be at least one licensed or certified paramedic, registered nurse, or physician on board an air ambulance to perform patient care duties on that air ambulance. The qualifications and numbers of air medical personnel shall be appropriate to patient care needs. Personnel employed by providers who are based in another state, do not need Texas certification/licensure but shall be certified/licensed in their respective state.

(1) Documentation of successful completion of training specific to the fixed-wing transport environment in general and the licensee's operation specifically shall be required. The curriculum shall be consistent with the Department of Transportation (DOT) Air Medical Crew- National Standard Curriculum, or equivalent program.

(2) Each attendant's qualifications shall be documented.

(3) Air medical personnel shall not be assigned or assume the cockpit duties of the flight crew members concurrent with patient care duties and responsibilities.

(4) The aircraft shall be operated by a pilot or pilots certified in accordance with applicable Federal Aviation Regulations.

(h) Medical supplies and equipment shall be consistent with the service's scope of care as defined in the protocols/standing orders. Medical equipment shall be functional without interfering with the avionics nor should avionics interfere with the function of the medical equipment. Additionally, the following equipment, clean and in working order, must be on the aircraft or immediately available for all providers:

(1) one or more stretchers installed in the aircraft cabin which meet the following criteria:

(A) can accommodate an adult, 6 feet tall, weighing 212 pounds except for a neonatal stretcher which has been fitted with an isolette. There shall be restraining devices or additional appliances available to provide adequate restraint of all patients including those under 60 pounds or 36 inches in height;

(B) the head of each stretcher shall be capable of being elevated up to 45 degrees. The elevating section must hinge at or near the patient's hips and shall not interfere with or require that the patient or stretcher securing straps and hardware be removed or loosened;

(C) each stretcher shall be positioned in the cabin to allow the air medical personnel clear view of the patient and shall ensure that medical personnel always have access to the patient's head and upper body for airway control procedures as well as sufficient space over the area where the patients chest is to adequately perform closed chest compression or abdominal thrusts on the patient;

(D) a pad or mattress impervious to moisture and easily cleaned and disinfected according to Occupation Safety and Health Administration (OSHA) bloodborne pathogen requirements;

(E) a device to make the stretcher surface rigid enough if the surface of the stretcher under the patient's torso is not firm enough to support adequate chest compressions; and

(F) shall have a supply of linen for each patient;

(2) an adequate and manually-controlled supply of gaseous or liquid medical oxygen, attachments for humidification, and a variable flow regulator for each patient;

(A) a humidifier, if used, shall be a sterile, disposable, one-time usage item;

(B) the licensee shall have and demonstrate the method used to calculate the volume of oxygen required to provide sufficient oxygen for the patients needs for the duration of the transport;

(C) the licensee shall have a plan to provide the calculated volume of oxygen plus a reserve equal 1000 liters or the volume required to reach an appropriate airport, whichever is longer;

(D) all necessary regulators, gauges and accessories shall be present and in good working order;

(E) the oxygen system shall be securely fastened to the airframe using FAA-approved restraining devices;

(i) a separate emergency backup supply of oxygen of not less than 57 liters with regulator and flow meter;

(ii) one adult, one pediatric size non-rebreathing mask, one adult size nasal cannula and necessary connective tubings and appliances.

(3) an electrically-powered suction apparatus with wide bore tubing, a large reservoir and various sizes suction catheters. The suction system may be built into the aircraft or provided with a portable unit. Backup suction is required and can be a manually operated device. (Bulb syringe not acceptable);

(4) hand operated bag-valve-mask ventilators of adult, pediatric and infant sizes with clear masks in adult, pediatric and infant sizes. It shall be capable of use with a supplemental oxygen supply and have an oxygen reservoir;

(5) airway adjuncts as follows:

(A) oropharyngeal airways in at least five assorted sizes, including adult, child and infant; and

(B) nasopharyngeal airways in at least three sizes with water soluble lubricant;

(6) assessment equipment as follows:

(A) equipment suitable to determine blood pressure of the adult, pediatric and infant patient(s) during flight;

(B) stethoscope;

(C) penlight/flashlight;

(D) heavy duty bandage scissors; and

(E) pulse oximeter;

(7) bandages and dressings as follows:

(A) sterile dressings such as 4x4s, ABD pads;

(B) bandages such as Kerlix, Kling; and

(C) tape in various sizes.

(8) container(s) and methods to collect, contain, and dispose of body fluids such as emesis, oral secretions, and blood consistent with OSHA bloodborne pathogen requirements;

(9) urinal and bedpan with toilet tissue;

(10) infection control equipment. The licensee shall have a sufficient quantity of the following supplies for all air medical personnel, each flight crew member, and all ground personnel with incidental exposure risks according to OSHA requirements which includes but is not limited to:

(A) protective gloves;

(B) protective gowns;

(C) protective eyewear;

(D) protective face masks;

(E) an approved bio-hazardous waste plastic bag or impervious container to receive and dispose of used supplies; and

(F) handwashing capabilities or antiviral towelettes.

(11) an adequate trash disposal system exclusive of bio-hazardous waste control provisions;

(12) the following additional equipment in amounts and sizes specified by the medical director is required for an air ambulance provider to function at the advanced level:

(A) advanced airway management equipment appropriate to the patient's needs;

(B) sterile crystalloid solutions in plastic containers, IV catheters, and administration tubing sets;

(C) hanger for IV solutions;

(D) pressure bag;

(E) tourniquets, tape, dressings;

(F) container appropriate to contain used sharp devices, needles, scalpels which meets OSHA requirements;

(G) a list signed by medical director defining quantities and types of drugs to be carried; and

(H) any specialized equipment required in medical treatment protocols/standing orders.

(13) cardiac monitor defibrillator-DC battery powered portable monitor/defibrillator with paper printout, accessories and supplies, with sufficient power supply to meet demands of the mission; and

(14) survival kit which shall include, but not be limited to, the following items which are appropriate to the terrain and environments the provider operates over:

(A) instruction manual;

(B) water;

(C) shelter-space blanket;

(D) knife;

(E) signaling devices;

(F) compass; and

(G) fire starting items.

(i) A system for security of medications, fluids, and controlled substances shall be maintained by each air ambulance licensee in compliance with local, state, and federal drug laws.

(j) The air ambulance provider shall own the following equipment or shall have a written lease agreement explaining the availability of the equipment for use when the patient's condition indicates the need:

(1) external cardiac pacing device;

(2) IV infusion pump capable of strict mechanical control of an IV infusion drip rate. Passive devices such as dial-a-flow are not acceptable; and

(3) a mechanical ventilator that can deliver up to 100 % oxygen concentration at pressures, rates and volumes appropriate for the size of the patient.

§157.14. Requirements for First Responder Organization Registration.

(a) First Responders Organization. First Responders Organizations (FRO's) are individuals or organizations which:

(1) routinely respond to emergency situations;

(2) utilize personnel who are emergency medical services (EMS) certified by the Texas Department of Health (department);

(3) provide on-scene patient care; and

(4) do not transport patients.

(b) Application requirements. The applicant shall submit a completed application to the department. A complete application consists of the following:

(1) the application;

(2) a personnel list to include social security number and certification/licensure level;

(3) description or map of the service area;

(4) agreements with appropriate licensed providers; and

(5) a nonrefundable application fee, if applicable.

(A) Any FRO which is, or has a contract with, an entity such as a business, corporation or department and whose first responder employees or members are compensated by that entity for providing first responder service shall pay a nonrefundable $50 application fee. If the registration is issued for less than 12 months in which case the nonrefundable fee shall be $25. The FRO's personnel are not exempt from the payment of certification application fees.

(B) Applicants who meet all the requirements for registration shall be issued a First Responder registration. The registration may be valid for up to 2 years, but may be issued for less than 2 years for administrative purposes.

(c) The FRO/provider agreement.

(1) The FRO shall have an agreement with all licensed providers and their medical directors who routinely transport patients treated by the FRO's personnel. The agreement shall be approved by the responsible person for the first responder organization, the service director and the medical director of the licensed EMS provider.

(2) The agreements shall address at a minimum the:

(A) level(s) of certification of FRO personnel providing care;

(B) protocols and medical equipment used by the FRO which must be approved by the medical director of the licensed transporting providers with whom the FRO has agreements;

(C) days of the week and hours of the day the FRO will be available for response;

(D) patient care reporting procedures;

(E) certification of FRO personnel who render patient care;

(F) process for the assessment of care provided by the FRO personnel;

(G) response code policies for FRO personnel;

(H) on-scene chain-of-command policies;

(I) policies regarding FRO personnel canceling en route EMS units;

(J) policies regarding FRO personnel accompanying patients in provider's vehicles; and

(K) patient confidentiality.

(d) Responsibilities of the FRO. During the registration period the FRO's responsibilities shall include:

(1) assuring ongoing compliance with the terms of the provider agreement(s);

(2) assuring that all personnel, when on-scene, are prominently identified by name, certification level and organization;

(3) monitoring and taking appropriate action regarding the quality of patient care provided by FRO personnel;

(4) monitoring personnel compliance with medical protocols;

(5) maintaining confidentiality of patient information according to the Health and Safety Code, Chapter 773, Subchapter D, §§773.091-773.096;

(6) carrying proof of first responder registration in all vehicles used or operated by the FRO;

(7) maintaining compliance with all applicable laws and regulations;

(8) monitoring and enforcing general personnel safety policies including at least personal protective equipment, immunizations and communicable disease exposure and emergency vehicle operation;

(9) notifying the department within 10 days if:

(A) the FRO ceases to exist or merges with another FRO;

(B) there is a change in the:

(i) official business address and/or phone number;

(ii) administrator;

(iii) providers associated with the FRO; and/or

(iv) medical director.

(e) Registration renewal process.

(1) The department shall notify the FRO at least 90 days before the expiration date of the current registration at the address shown in the current records of the department. If a notice of expiration is not received, it is the responsibility of the FRO to notify the department and request registration renewal application information.

(2) FRO's shall submit a completed application and nonrefundable fee, if applicable, and must verify compliance with the requirements of their registration.

(f) Registration denial. Registration may be denied for, but not limited to, the following reasons:

(1) failure to meet requirements of first responder registration in accordance with subsections (b) and (c) of this section;

(2) previous failure to meet the responsibilities of a registered first responder organization as described in subsection (d) of this section;

(3) falsifying any information, record or document required for a first responder registration;

(4) misrepresenting any requirements for first responder registration or renewal of first responder registration;

(5) history of criminal activity while registered as an FRO;

(6) history of disciplinary action relating to first responder registration; and/or

(7) issuing a check for application for first responder registration which is subsequently returned to the department unpaid.

(g) Registration revocation criteria. First responder registration may be revoked or suspended for failure to meet the responsibilities of a registered FRO as described in subsection (d) of this section.

§157.16. Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License.

(a) Emergency Suspension. The bureau chief, Bureau of Emergency Management (bureau), may issue an emergency suspension order to any licensed emergency medical services (EMS) provider if the bureau chief has reasonable cause to believe that the conduct of any licensed provider creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the bureau chief is effective immediately without a hearing or notice to the license holder. Notice to the license holder shall be presumed established on the date that a copy of the signed emergency suspension order is sent to the individual listed as the administrator of the service at the address shown in the current records of the department.

(2) A copy of the emergency suspension order shall be sent to the provider's listed medical director and to any and all government entities, institutions or facilities with which the license holder is known to be associated to the addresses shown in the current records of the department.

(3) If a written request for a hearing is received from the suspended license holder within 15 days of the date of notice, the department shall conduct a hearing not later than the thirtieth day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(b) Administrative penalty. An administrative penalty may be assessed when an EMS provider is in violation of the Health and Safety Code, Chapter 773, 25 TAC Chapter 157, or the reasons outlined in subsections (c) and (d) of this section.

(c) Accountability. A provider retains ultimate responsibility for the operation of the service. A licensed EMS provider may not claim a defense when one or more staff members, acting with or without the consent and knowledge of the license holder, commit(s) multiple violations in this section, or perform(s) contrary to EMS standards while on EMS business for the provider.

(d) Nonemergency suspension or revocation. An EMS provider license may be suspended or revoked for, but not limited to, the following reasons:

(1) failing to comply with any requirement of provider licensure as defined in §157.11 of this title (relating to Requirements for an EMS Provider License);

(2) operating the service while the license is under suspension;

(3) falsifying or altering a license issued by the department;

(4) failing to correct deficiencies as instructed by the department;

(5) obtaining or attempting to obtain or assisting another to obtain a provider license or personnel certification by fraud, forgery, deception, or misrepresentation;

(6) providing false or misleading advertising and/or making false or misleading claims to clients or the public about the service;

(7) failing to operate a subscription service/membership program according to provisions in §157.11 of this title;

(8) failing to maintain patient confidentiality according to standards and department regulations;

(9) discriminating in the provision of services based on national origin, race, color, creed, religion, gender, sexual orientation, age, physical or mental disability, or economic status;

(10) falsifying a patient care record or any other document or record resulting from or pertaining to EMS Provider responsibilities;

(11) obtaining any fee or benefit by fraud, coercion, theft, deception, or misrepresentation;

(12) failing to give the department true and complete information when asked, regarding any alleged or actual violation of the Health and Safety Code, Chapter 773, or the rules adopted thereunder or failing to report such a violation;

(13) failing to pay an administrative penalty in full within established time frames;

(14) failing to staff each vehicle deemed to be in service or response ready with appropriately and currently certified personnel;

(15) operating, directing, or allowing staff to operate vehicle warning devices unnecessarily or inappropriately;

(16) operating, directing, or allowing any person to operate any vehicle on EMS business while under the influence of any substance that inhibits the mental or physical capacities of that person;

(17) having been found to have operated, directed, or allowed staff to operate any vehicle while on EMS business in a reckless or unsafe manner and/or in a manner that is dangerous to the health or safety of any person;

(18) operating, directing, or allowing staff to operate any vehicle that is not mechanically safe, clean and in good operating condition; and/or

(19) having been found in violation of any local, state, or national code or regulation pertaining to EMS operations or business practices; and/or violating any rule or standard that could jeopardize the health or safety of any person;.

(e) Denial of a license. A license may be denied for, but not limited to, the following reasons:

(1) failing to meet the licensing requirements outlined in §157.11 of this title;

(2) one of the owners having a history of a misdemeanor or felony which the department has determined may put the safety of any person; at risk;

(3) previous conduct while holding an EMS provider license which could put any person at risk;

(4) EMS provider in another state;

(5) falsifying or misrepresenting any fact or requirement on or for an application or related document for a provider license or EMS personnel license/certificate; and/or

(6) issuing a check for application for a provider license which is returned to the department unpaid.

(f) Notification. If the department proposes to deny, suspend, revoke, or probate a license, the license holder shall be notified at the address shown in the current records of the department. The notice

shall state the alleged facts or conduct to warrant the proposed action and state that the license holder may request a hearing.

(g) Hearing Request.

(1) A request for a hearing shall be in writing and submitted to the bureau chief and postmarked within 15 days after the date of the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(2) If the candidate, applicant or licensee does not request a hearing in writing within 15 days after proper notice, the individual is deemed to have waived the opportunity for a hearing as outlined in the notice.

(h) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(i) Re-application.

(1) Two years after denial or revocation of a license, or the voluntary surrender of a license while disciplinary action is pending, an individual may petition the department in writing for re-application for licensure. Expiration of a certificate or license during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(2) The petitioner bears the burden of proving fitness for licensure.

(3) The department may allow an application for licensure if there is proof that the health, safety, and confidence of the public will be protected.

(4) The department may deny any petitioner if, in the judgement of the bureau chief, the reason for the original action continues to exist or if the petitioner has failed to offer sufficient proof that there is no longer a threat to public health, safety, and/or confidence.

(5) If the application is allowed, the petitioner shall be required to meet the requirements as described in §157.11 of this title and in addition shall meet the terms of probation in subsection (h) of this section.

(j) Expiration of a license during suspension. A provider whose license expires during a suspension period shall not reapply for licensure until the end of the suspension period.

(k) Surrender of a license. Surrender of a license shall not deprive the department of jurisdiction in regard to disciplinary action against the license holder. A provider who wishes to surrender his or her license prior to the expiration of the license may do so by:

(1) completing a Surrender of License statement; and

(2) in the event that a disciplinary action is pending or reasonably imminent, the licensee shall acknowledge that the surrender constitutes a plea of "no contest" to the allegations upon which the disciplinary action is predicated, acknowledging that the surrender is a "no contest" plea in the event that a disciplinary action is pending or reasonably imminent.

(l) Notification of disposition. An order of final disposition of any disciplinary action shall be sent to the license holder at the address shown in the current records of the department. A copy of the order shall also be sent to the provider's medical director and to any government entity, institution or facility with which the license holder is known to be associated at the address shown in the current records of the department.

Filed with the Office of the Secretary of State on April 10, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
Effective date: September 1, 2000
Proposal publication date: October 29, 1999
For further information, please call: (512) 458-7236

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Subchapter C. EMERGENCY MEDICAL SERVICES TRAINING AND COURSE APPROVAL

25 TAC §§157.32 - 157.35

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 10, 2000.

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Susan K. Steeg
General Counsel
Texas Department of Health
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For further information, please call: (5120 458-7236

♦ ♦ ♦

25 TAC §§157.33, 157.36, 157.37

The new rules are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§157.33. Certification.

(a) Certification requirements. A candidate for emergency medical services (EMS) certification shall:

(1) be at least 18 years of age;

(2) have a high school diploma or GED certificate;

(3) have successfully completed a Texas Department of Health (department)- approved course; and

(4) submit an application and the following nonrefundable fees as applicable:

(A) $50 for emergency care attendant (ECA) or emergency medical technician (EMT);

(B) $75 for EMT-intermediate (EMT-I) or EMT-paramedic (EMT-P); and

(C) EMS volunteer - no fee. However, if such an individual receives compensation during the certification period, the exemption ceases and the individual shall pay a prorated fee to the department based on the number of years remaining in the certification period when employment begins. The nonrefundable fee for ECA or EMT certification shall be $12.50 per each year remaining in the certification. The nonrefundable fee for EMT-I or EMT-P shall be $18.75 per each year remaining in the certification. Any portion of a year will count as a full year; and

(5) pass the department's written examination or the National Registry examination.

(b) Length of certification. A candidate who meets the requirements of subsection (a) of this section shall be certified for four years beginning on the date of issuance of a certificate and wallet-size certificate.

(c) Scheduling authority for certification examinations.

(1) The department has final authority for scheduling all certification examination sessions.

(2) Examinations shall be administered at regularly scheduled times in regional test centers.

(3) The candidate shall be responsible for making appropriate arrangements for the examination.

(4) The department is not required to set special examination schedules for a single candidate or for a specific group of candidates.

(d) Time limits for completing requirements.

(1) A candidate shall complete all requirements for certification no later than one year after the candidate's course completion date.

(2) A candidate who does not complete all requirements for certification within one year of the candidate's initial course completion date must meet the requirements of subsection (a) of this section including the completion of another initial course to achieve certification.

(e) Retesting.

(1) A candidate who does not pass the department's written examination may retest after:

(A) submitting an application to retest; and

(B) paying a nonrefundable fee of $25, if applicable.

(2) A candidate who does not pass a retest may request a second retest after:

(A) submitting documentation that verifies completion of a formal refresher course;

(B) submitting an application to retest; and

(C) paying a nonrefundable fee of $25, if applicable.

(3) A candidate who does not pass a second retest must meet the requirements of subsection (a) of this section which includes completion of another initial course to achieve certification.

(f) Prolonged application process by the department. If the application approval process is prolonged due to a felony/misdemeanor conviction investigation or other administrative procedure within the department, the time period for determination of certification eligibility will be extended to reasonably accommodate the candidate and/or the department.

(g) Non-transferability of certificate. A certificate is not transferable. A duplicate certificate may be issued if requested with a nonrefundable fee of $5.

(h) Completion of higher level courses. Individuals who successfully complete certification requirements for a higher level of certification are considered certified only at the higher level. The completion of a course at a higher level of certification shall satisfy the course completion requirements for a lower level of certification, and the individual may apply for certification at the lower level by following the procedure listed in subsections (a)-(c) of this section.

(i) Voluntary downgrades. An individual who holds EMS certification may be certified at a lower level voluntarily for the remainder of a current certification by submitting an application for certification and the applicable nonrefundable fee as required in subsection (a)(4) of this section;

(j) Recertification.

(1) A certificant shall meet the following requirements for recertification. The certificant shall:

(A) complete the continuing education (CE) requirements for recertification as required in this title (relating to Continuing Education) prior to the expiration of the certificate and prior to meeting the requirement in subparagraph (D) of this paragraph;

(B) submit to the department an application for recertification and the nonrefundable fee as set out in subsection (a)(4) of this section; and

(C) complete the department's CE evaluation which shall be an attempt to measure the individual's knowledge necessary for the adequate provision of emergency care for current level of certification. The department has final authority for scheduling all written CE evaluation sessions.

(2) After verification by the department of the information submitted by the certificant, a certificant who meets requirements of this subsection will be recertified for four years commencing on the day following the expiration date of the most recent certificate. A new certificate and wallet-sized certificate signed by department officials shall be issued.

(3) The results of the CE evaluation along with information relevant to interpretation of the scores will be issued to the recertifying candidate, associated medical directors, providers, first responder organizations, and/or employers.

(4) One re-evaluation may be taken. A fee of $25 shall accompany the request for a re- evaluation. The re-evaluation results will be issued as in paragraph (3) of this subsection.

(5) In conjunction with the certificant's two-year interim CE reporting cycle, the certificant may elect to complete the CE evaluation or the certificant's medical directors, providers, first responder organizations and/or employers may mandate that the certificant complete the CE evaluation and, if applicable, one re-evaluation. The first CE evaluation shall be completed within 180 days after the deadline date of the interim two-year reporting cycle. The re-evaluation may be completed after the 180-day period. The CE evaluation results will be issued as described in paragraph (3) of this subsection.

(6) To take a two-year interim CE evaluation, the certificant shall submit an application, and a nonrefundable fee as set out in subsection (a)(4) of this section. A fee of $25 shall accompany the request for a re-evaluation.

(k) Reentry or late recertification.

(1) Reentry is the process for regaining EMS certification:

(A) after the certificate has been surrendered;

(B) during a period of inactive status;

(C) when an application for renewal is postmarked after the expiration of the most recent certificate; or

(D) when all requirements for recertification are not met prior to the end of the latest certification period.

(2) Late recertification.

(A) The candidate shall be considered as non-certified and may not function in the capacity of an EMS certificant or represent that he is EMS certified until recertification is issued.

(B) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying to the department a nonrefundable renewal fee that is equal to 1 1/2 times the normally required application renewal fee for that level as listed in subsection (a)(4) of this section.

(C) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying to the department a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (a)(4) of this section. A candidate shall submit documentation that verifies completion of a formal refresher course.

(D) A candidate shall pass the department's written exam.

(E) A candidate whose certificate has been expired for one year or more may not renew the certificate. The candidate may become certified by complying with the requirements of subsection (a) of this section including the successful completion of another initial course.

(F) A candidate who was certified in this state, moved to another state, and is currently certified or licensed and has been in practice in the other state for the two years preceding the date of application may become certified without reexamination. The candidate must pay to the department a nonrefundable fee that is equal to two times the normally required renewal fee for certification as listed in subsection (a)(4) of this section.

(l) Inactive status. A certified EMT, EMT-I, or EMT-P may make application to the department for inactive status at any time during or after the certification period so long as the certification can be verified by department.

(1) The request for inactive status shall be accompanied by a nonrefundable fee of $25 in addition to the regular nonrefundable application fee.

(2) The initial inactive status period shall remain in effect until the end of the current certification period for those candidates who are currently certified and may be renewable every four years thereafter by submitting an application and the appropriate nonrefundable fee as in subsection (a)(3) of this section.

(3) The initial inactive status period shall remain in effect for four years from the date of issuance for those candidates not currently certified.

(4) While on inactive status, a person shall not practice other than to act as a bystander rendering first aid or cardiopulmonary resuscitation (CPR). Practicing in any other capacity for compensation or as a volunteer shall be cause for denial of reentry and decertification.

(m) Reciprocity. A person currently certified by the National Registry or in another state may be certified by submitting an application and a nonrefundable fee of $100.

(1) After evaluation of the application and verification of the certification by the department, the candidate will be certified for one year.

(2) Prior to the expiration of the one-year certification, the certificant shall:

(A) submit a completed personnel certification application and a nonrefundable fee as in subsection (a)(4) of this section;

(B) complete 25 percent of the CE requirement for the appropriate level as indicated in this title or complete a refresher course at the appropriate level; and

(C) pass the department's written examination.

(3) A candidate who fails the written examination may retest one time after:

(A) submitting an application to retest; and

(B) paying a nonrefundable fee of $25.

(4) The retest shall be completed no later than the end of the one-year certification period.

(5) After verification by the department of the information submitted, a candidate who meets the requirements of this section shall be certified for four years beginning on the date of issuance of the certificate.

(6) A candidate who does not complete the requirements for certification before the expiration date of the one-year certificate or who fails a retest shall meet the requirements of subsection (a) of this section including the successful completion of another initial course as applicable to achieve certification.

(n) Equivalency.

(1) A candidate for certification who completed EMS training outside the United States or its possessions, or a candidate who is certified or licensed in another healthcare discipline shall:

(A) be at least 18 years of age;

(B) submit a copy of the curriculum completed by the candidate for review by a regionally accredited post secondary institution approved by the department to sponsor an EMS education program;

(C) document correction of any deficiencies identified during review of the curriculum by submitting evidence of remedial training from a department approved EMS education program;

(D) submit an application and appropriate nonrefundable fee listed in subsection (a) of this section to the department; and

(E) pass the department's written examination.

(2) Evaluations of curricula conducted by post secondary educational institutions under this subsection shall be consistent with the institution's established policies and procedures for awarding credit by transfer or advanced placement.

(o) Military personnel. A person certified by the department who is deployed in support of military, security, or other action by the United Nations Security Council, a national emergency declared by the president of the United States, or a declaration of war by the United States Congress is eligible for recertification under timely recertification requirements, from the person's date of demobilization until one calendar year after the date of demobilization but will not be certified during that period.

§157.36. Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License.

(a) Emergency Suspension. The Bureau Chief, Bureau of Emergency Management (bureau), may issue an emergency suspension order to any emergency medical services (EMS) certificant or licensee if the bureau chief has reasonable cause to believe that the conduct of any certificant or licensee creates an imminent danger to public health or safety.

(1) An emergency suspension issued by the bureau chief shall be effective immediately without a hearing or notice to the certificant or licensee. Notice to the certificant or licensee shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department.

(2) A copy of the emergency suspension order shall be sent to any licensed EMS provider, first responder organization, medical director, institution or facility with which the certificant or licensee is known to be associated, at the address shown in the current records of the department.

(3) If a written request for a hearing is received from the suspended individual within 15 days of the date of suspension, the department shall conduct a hearing not later than the thirtieth day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(b) Nonemergency suspension, decertification and revocation of a certificant or paramedic licensee. The department may suspend or decertify an EMS certificant or suspend or revoke a licensed paramedic for, but not limited to, the following reasons:

(1) violating any provision of the Health and Safety Code, Chapter 773, and/or Title 25 of the Texas Administrative Code (TAC), as well as Federal, State, or local laws, rules or regulations affecting, but not limited to, the practice of EMS;

(2) any conduct which is criminal in nature and/or any conduct which is in violation of any criminal, civil and/or administrative code or statute;

(3) failing to make accurate, complete and/or clearly written patient care reports documenting a patient's condition upon arrival at the scene, the prehospital care provided, and patient's status during transport, including signs, symptoms, and responses during duration of transport;

(4) falsifying any EMS record; patient record or report; or making false or misleading statements in a oral report; or destroying a patient care report;

(5) disclosing confidential information or knowledge concerning a patient except where required or allowed by law;

(6) causing or permitting physical or emotional abuse or injury to a patient or the public, and/or failing to report such abuse or injury to the employer, appropriate legal authority and/or the department;

(7) performing advanced level or invasive treatment without medical direction or supervision, or practicing beyond the scope of certification or licensure;

(8) failing to respond to a call while on duty and/or leaving duty assignment without proper authority;

(9) abandoning a patient, turning over the care of a patient or delegating EMS functions to a person who lacks the education, training, experience, knowledge to provide appropriate level of care for the patient;

(10) failing to comply with the terms of a department ordered probation or suspension;

(11) issuing a check to the department which has been returned to the department or its agent unpaid;

(12) discriminating in any way based on real or perceived conditions of national origin, race, color, creed, religion, sex, sexual orientation, age, physical disability, mental disability, or economic status;

(13) misrepresenting level of any certification or licensure;

(14) misappropriating medications, supplies, equipment, personal items, or money belonging to the patient, employer or any other person or entity or failing to take reasonable precautions to prevent such misappropriations;

(15) falsifying or altering, or assisting another in falsifying or altering, any department application, EMS certificate or license; or using or possessing any such altered certificate or license;

(16) committing any offense during the period of a suspension/probation or repeating any offense for which a suspension/probation was imposed within the two-year period immediately following the end of the suspension or probation;

(17) cheating and/or assisting another to cheat on any department examination or the examination of any provider licensed by the department or any institution or entity conducting EMS training;

(18) obtaining or attempting to obtain and/or assisting another in obtaining or attempting to obtain, any advantage, benefit, favor or gain by fraud, forgery, deception, misrepresentation, untruth or subterfuge;

(19) illegally possessing, dispensing, administering or distributing, or attempting to illegally dispense, administer, or distribute controlled substances as defined by the Health and Safety Code, Chapter 481 and/or Chapter 483;

(20) having an EMS certificate or license or another health provider certificate or license suspended or revoked in another state, while holding a Texas EMS certificate or license;

(21) failing or refusing to give the department full and complete information and cooperation, upon request;

(22) failing to notify the department within 30 days of final sentencing of any criminal offense which resulted in final conviction as defined in §157.37(c) of this title (relating to Certification or Licensure of Persons With Criminal Backgrounds);

(23) having been convicted of any misdemeanor or felony in accordance with the provisions of §157.37 of this title;

(24) failing to complete any portion, including submission of fingerprints, of the criminal history evaluation process within 60 days of notification to do so, in accordance with provisions in §157.37 of this title;

(25) failing to notify the department within 10 days of an arrest for any alcohol or drug related offense;

(26) engaging in any conduct that jeopardizes or has the potential to jeopardize the health or safety of any person;

(27) abusing alcohol or drugs to such an extent that, in the opinion of the bureau chief, the health or safety of any person is, or may be, endangered;

(28) engaging in any activity that betrays the public trust and confidence in EMS; and

(29) engaging in any conduct listed in §157.37(a)-(c) of this title whether or not resulting in a conviction.

(c) Criteria for denial of certification, or licensure. A certificate or license may be denied for, but not limited to, the following reasons:

(1) failing to meet standards as required in this section;

(2) previous conduct on the part of the applicant during the performance of duties relating to the responsibilities of EMS personnel that is contrary to accepted standards of conduct as described in this section;

(3) conviction of a crime which directly relates to the profession of EMS personnel as described in §157.37 of this title;

(4) disciplinary action relating to a certificate or license issued in another state;

(5) falsifying any Texas application for certification or licensure or falsifying any application or documentation used to acquire registration, certification or licensure;

(6) issuing a check for any reason to the department which has been returned to the department or its agent for any reason;

(7) misrepresenting any requirements for certification, recertification, licensure, renewal;

(8) making a plea of no contest in any criminal action which relates or could relate to the candidate's ability to carry out EMS duties;

(9) receiving a deferred adjudication in a criminal action which relates or could relate to the candidate's ability to carry out EMS duties; and/or

(10) staffing an EMS vehicle deemed to be in service while certification or license is expired, suspended or revoked.

(d) Notification. If the department proposes to deny, suspend, revoke, or probate a certificate or license, the holder of same shall be notified at the address as shown in the current records of the department. The notice must state the alleged facts or conduct to warrant the proposed action and state that the certificant or licensee may request a hearing.

(e) Hearing request.

(1) A request for a hearing shall be in writing and submitted to the bureau chief and postmarked within 15 days after the date of the notice. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(2) If the applicant, certificant or licensee does not request a hearing in writing within 15 days after notice, the individual is deemed to have waived the opportunity for a hearing and the department may take the proposed action.

(f) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued. Any revocation of a license or decertification under this section shall require that any future EMS certificate or license issued by the department to the same individual begin with a probationary period of not less than one year.

(g) Reapplication.

(1) Two years after denial, decertification or revocation of a license, or the voluntary surrender of a certificate or license while disciplinary action is pending, an individual may petition the department in writing for reapplication for certification or licensure. Expiration of a certificate or license during the suspension period shall not affect the two-year waiting period required before a petition can be submitted.

(2) The petitioner bears the burden of proving fitness for certification or licensure.

(3) The department may allow certification or licensure if there is proof that the health, safety, and confidence of the public will be protected.

(4) The department may deny any petitioner if, in the judgement of the bureau chief, the reason for the original action continues to exist or if the petitioner has failed to offer sufficient proof that there is no longer a threat to public health, safety, and/or confidence.

(5) If the reapplication is allowed, the petitioner shall be required to meet the requirements for licensure as described in §157.40 of this title (relating to Paramedic Licensure), or certification as described in §157.33 of this title (relating to Certification), §157.43 of this title (relating to Course Coordinator Certification), or §157.44 of this title (relating to Emergency Medical Service Instructor Certification) and in addition shall meet the terms of probation in subsection (f) of this section.

(h) Surrender of a certificate or license. Surrender of a certificate or license shall not deprive the department of jurisdiction in regard to disciplinary action against the certificant or licensee. An individual who wishes to surrender his or her certification or license prior to the expiration of the certificate or license may do so by:

(1) completing a Surrender of Certificate or License statement; and

(2) in the event that a disciplinary action is pending or reasonably imminent, the certificant or licensee must acknowledge that the surrender constitutes a plea of "no contest" to the allegations upon which the disciplinary action is predicated.

(i) Notification of disposition. A copy of the order of final disposition of proposed disciplinary shall be sent to any licensed EMS provider, first responder organization, medical director, institution or facility with which the certificant or licensee is known to be associated at the address shown in the current records of the department.

§157.37. Certification or Licensure of Persons With Criminal Backgrounds

(a) Purpose. This section lists guidelines and criteria for establishing the eligibility of persons with criminal backgrounds for certification or continued certification as emergency medical services (EMS) personnel or licensure or continued licensure as paramedics.

It is also the purpose of this section to apply the requirements of the Occupations Code, Chapter 53, Subchapter B, and to consider and review the criteria listed in the Occupation Code, Chapter 53, Subchapter B, §53.022 and §53.023. The Texas Department of Health (department) may deny, decertify, revoke, and/or suspend a certificate or license to persons who have committed a felony or misdemeanor to include, but not limited to, those in this section.

(b) Access to criminal history record information.

(1) The department is entitled to obtain criminal history information maintained by the Department of Public Safety, the Federal Bureau of Investigation Identification Division, or any other law enforcement agency to investigate the eligibility of a candidate for EMS personnel certification, recertification, licensure or renewal and to investigate the continued eligibility of a certificant/licensee.

(2) A candidate for EMS certification/licensure or an EMS certificant/licensed paramedic who has disclosed a criminal history record or who has a known criminal history record shall be required to submit a completed set of fingerprints as required under the Government Code, §411.087 and/or §411.110.

(3) With respect to an applicant for certification or licensure who has a criminal history record, the department is authorized to close an application file when the applicant has failed to respond to request(s) for information for eligibility determination under the Occupations Code, Chapter 53 Subchapter B; Health and Safety Code, Chapter 773; or the rules adopted thereunder within 60 days of said request(s).

(c) Criminal convictions.

(1) When the conviction of a felony or misdemeanor relates directly to the duties and responsibilities of EMS personnel, the department may:

(A) deny to a person the opportunity for eligibility for a certificate or license;

(B) disqualify a person from receiving a certificate or license; or

(C) decertify, revoke or suspend an existing certification or license.

(2) In considering whether a crime relates directly to the occupation of EMS personnel, the department shall consider and review the following:

(A) the Occupations Code, Chapter 53, Subchapter B, §53.022;

(B) the nature and seriousness of the crime;

(C) the relationship of the crime to the purposes for requiring a certificate or license to engage in the occupation;

(D) the extent to which involvement in EMS would afford a certificant or licensee an opportunity to engage in further criminal activity of the same type as that in which the person previously has been involved; and

(E) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the EMS profession.

(3) The following crimes are considered to relate to the certification and licensure of EMS personnel because they impact the ability to carry out the duties and responsibilities associated with patient care and public safety and shall be considered and reviewed:

(A) offenses under the Health and Safety Code, Chapter 773;

(B) under the Transportation Code;

(C) offenses under the Alcoholic Beverage Code;

(D) offenses under the Health and Safety Code, Texas Controlled Substances Act, Chapters 481,482 and 483, relating to substance abuse;

(E) offenses under Department of Public Safety of the State of Texas, Government Code, Chapter 411, Subchapter H, relating to the license to carry a concealed handgun;

(F) offenses under the following titles of the Texas Penal Code:

(i) Title 4 - offenses of attempting or conspiring to commit any of the offenses in this clause;

(ii) Title 5 - offenses against the person;

(iii) Title 6 - offenses against the family;

(iv) Title 7 - offenses against property;

(v) Title 8 - offenses against public administration;

(vi) Title 9 - offenses against public order and decency;

(vii) Title 10 - offenses against public health, safety, and morals; and/or

(viii) Title 11 - offenses involving organized crime.

(G) Offenses listed in subparagraph (F)(i)-(viii) of this subsection are not exclusive in that the department may consider similar criminal convictions from other state, federal, foreign or military jurisdictions which, although not listed in paragraph (F)(i)-(viii) indicate the lack of ability, capacity, or fitness of the individual to perform the duties and responsibilities of EMS personnel.

(d) Criteria for eligibility and continued eligibility. The department will apply the criteria outlined in the Occupations Code, Chapter 53, Subchapter B, §53.023. In applying the criteria, it shall be the responsibility of the candidate/certificant/licensee to obtain and send the department the entire court record for each criminal offense and recommendations of the prosecution, and/or law enforcement and/or correctional authorities regarding the offense(s). The candidate/certificant/licensee shall also furnish documentation acceptable to the department of prior/current employment status, evidence of court-ordered and/or voluntary rehabilitation, evidence of good conduct in their community, and evidence of payment of all outstanding court costs, supervision fees, fines, and restitution as ordered in the criminal cases in which they have been convicted.

(1) The department believes that those certified/licensed in the EMS profession shall conduct the occupation with honesty, trustworthiness and integrity. The department shall consider, review and take action against those candidates/certificants/licensees who during the course of the criminal history evaluation, or by nature of their conviction of certain crimes, exhibit to the department an inability or unwillingness to follow those requirements.

(2) As authorized under the Occupations Code, Chapter 53, Subchapter B, §53.021(b), upon a certificant/licensee's felony conviction, felony probation revocation, revocation of parole or revocation of mandatory supervision which results in incarceration, their certificate/license shall be decertified/revoked.

(e) Procedures for denying, decertifying, revoking, suspending, or probating a certificate or license to persons with criminal backgrounds can be found in §157.36(c)-(k) of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License).

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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Susan K. Steeg
General Counsel
Texas Department of Health
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Proposal publication date: October 29, 1999
For further information, please call: (512) 458-7236

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Subchapter D. EMERGENCY MEDICAL SERVICES PERSONNEL CERTIFICATION

25 TAC §§157.41 - 157.47, 157.51, 157.53

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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25 TAC §§157.43, 157.44

The new rules are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§157.43. Course Coordinator Certification

(a) General.

(1) A course coordinator is an individual who has the overall responsibility for conducting an emergency medical services (EMS) training course under the direction of an approved EMS training program (program).

(2) A course coordinator must be certified as at least an emergency medical technician (EMT), and must be certified or licensed at or above the level of the course being coordinated.

(3) Course coordinator certification is dependent on the individual's EMS personnel certification and is subject to the same status as that personnel certification. If the department imposes disciplinary action in accordance with §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License) or §157.36 of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License), the action shall also be imposed automatically and immediately on the individual's course coordinator certification.

(b) Levels of certification. Course coordinators may be certified as a basic coordinator or as an advanced coordinator.

(c) Currently certified course coordinators. Course coordinators certified on the effective date of this rule shall be considered to have met the requirements of subsection (d) or (e) of this section appropriate to their current level of certification.

(d) Basic coordinator requirements. To be certified as a basic course coordinator, the candidate shall:

(1) submit an application for basic course coordinator certification along with the nonrefundable fee of $75 to the Texas Department of Health (department) except a fee shall not be required if compensation is not received for coordinating training courses or programs;

(2) have been a certified EMS instructor for at least two consecutive years;

(3) have documented not less than 120 hours of instruction for initial EMS certificants; or have successfully conducted an EMT-Basic course;

(4) submit documentation of positive evaluations as a certified instructor.

(5) be affiliated with and operate under the supervision of a licensed provider, an EMS medical director, a teaching hospital, a regionally accredited post-secondary educational institution and/or a health care institution accredited by an organization recognized by the department;

(6) submit letters of intent from qualified providers of clinical and field internship experience;

(7) have successfully completed a department-sponsored course coordinator training course; and

(8) after completing all the above requirements, pass the EMS coordinator exam and retest, if necessary, no later than one year after course completion date. The nonrefundable retest fee is $25, except a fee shall not be required if compensation is not received for coordinating training courses or programs. If requirements are not completed within one year after course completion date, the candidate must meet the requirements of subsection (d) of this section including the completion of another initial course to be certified.

(e) Advanced coordinator requirements. To be certified as an advanced course coordinator, the candidate shall:

(1) submit an application for advanced course coordinator certification along with the nonrefundable fee of $75 to the department; except a fee shall not be required if compensation is not received for coordinating training courses or programs;

(2) have an associate degree, a bachelor degree, or an advanced degree;

(3) have been a certified EMS instructor for at least four consecutive years or as a basic course coordinator for two consecutive years;

(4) have documented not less than 120 hours of instruction for initial EMS certificants;

(5) submit documentation of positive evaluations as a certified instructor or as a basic coordinator;

(6) be affiliated with and operate under the supervision of a regionally accredited post-secondary educational institution, a health care institution accredited by an organization recognized by the department, or another entity approved by the department to sponsor an advanced training program in accordance with §157.32 of this title (relating to EMS Education Program and Course Approval);

(7) submit a letter of intent from qualified providers of clinical and field internship experience;

(8) have successfully completed a department-sponsored course coordinator training course;

(9) after completing all the above requirements, pass the EMS coordinator exam and retest, if necessary, no later than one year after course completion date. The nonrefundable retest fee is $25, except a fee shall not be required if compensation is not received for coordinating training courses or programs. If requirements are not completed within one year after course completion date, the candidate must meet the requirements of subsection (e) of this section including the completion of another initial course to be certified; and

(10) candidates who hold current basic coordinator certification and are applying for advanced coordinator certification must complete all requirements of this subsection except paragraphs (e)(8) and (e)(9) of this subsection.

(f) Period of Certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of the applicable subsection (d) or (e) of this section shall be certified as an course coordinator for two years commencing on the date of issuance of the certificate.

(g) Course coordinator training. All course coordinator courses shall be conducted by the department or by the department in conjunction with a regionally accredited post-secondary educational institution approved by the department to sponsor a training program. Criteria for admission to coordinator training shall be as follows:

(1) the candidate for admission to course coordinator training will meet the requirements of subsection (d) or (e) of this section as appropriate to the level of certification desired;

(2) the candidate shall submit a resume and completed application to the appropriate department regional EMS office;

(3) the appropriate department regional EMS director will forward the application and attachments to the appropriate training facility with a recommendation regarding the candidate's admission status; and

(4) successful candidates will be given a seat in the class based on availability and admissions requirements. .

(h) Responsibilities. Course coordinator shall have the following responsibilities:

(1) plan for and evaluate the overall operation of assigned courses;

(2) provide supervision and oversight for assigned courses;

(3) act as liaison between the students, personnel instructing in assigned courses, the program, and the department;

(4) coordinate submission of course approval documents and fees, if applicable, for assigned courses to the department as defined in the Education and Training Manual;

(5) assure availability of classrooms and other facilities necessary to provide for the instruction and convenience of students enrolled in assigned courses;

(6) in cooperation with the training program, process student applications and select students;

(7) schedule classes and assign program instructors;

(8) assure that training equipment and supplies are available and operational for each laboratory session;

(9) maintain effective relationships with clinical and field internships facilities necessary to meeting the instructional objectives of assigned courses;

(10) develop field internship and clinical objectives for assigned courses;

(11) train and evaluate internship preceptors;

(12) in cooperation with the training program, maintain all course records for a minimum of five years;

(13) in cooperation with the training program coordinate course written examinations, skills proficiency verifications, and other student evaluations;

(14) in cooperation with the training program evaluate the effectiveness of the personnel who instruct in assigned courses;

(15) in cooperation with the training program supervise and evaluate the effectiveness of the clinical and field internship training for assigned courses; and

(16) in cooperation with the training program attest to the successful course completion of all students who meet the program's requirements for completion.

(i) Exception. A program may request the department to grant an exception to allow a person not currently certified as a course coordinator to temporarily perform the duties listed in subsection (h) of this section.

(1) Such request must be submitted in writing and must include the following:

(A) documentation of the urgency of the situation;

(B) a letter from the program endorsing the individual who is to temporarily perform the duties of course coordinator; and

(C) letters of intent from qualified providers of clinical and field internship experiences appropriate to the level of training to be offered; and

(D) a letter of intent from a medical director.

(2) In determining whether the request for an exception is to be approved or denied, the department shall consider but not be limited to the following issues:

(A) resignation of a previous course coordinator or the inability of a course coordinator to complete a current training course;

(B) need for training in an area where a certified course coordinator is not available within a reasonable distance and training is unavailable through no outreach or distance learning technology; and

(C) the probable adverse consequences to prehospital emergency care. if the exception is not approved.

(3) After evaluation by the department, the program shall be notified, in writing, of the approval or denial of the request.

(4) An individual who is approved shall be considered a temporary course coordinator for not more than two years . If all requirements for course coordinator certification are not met in the two-year period, the approved training program with which the coordinator is affiliated must demonstrate a continuing need for the exception. If the department does not continue the exception, temporary status shall cease and the individual may no longer function as a temporary course coordinator.

(j) Recertification.

(1) Prior to the expiration of a course coordinator certificate, the department shall send a notice of expiration to the certificant at the address shown in the current records of the department. It is the responsibility of course coordinators to notify the department of any change of address.

(2) If a certificant has not received notice of expiration from the department 30 days prior to the expiration, it is the duty of the certificant to notify the department and request an application for recertification. Failure to apply for recertification shall result in expiration of the certificate.

(3) To be eligible for recertification, the course coordinator shall meet recertification requirements during the latest coordinator certification period and:

(A) maintain active EMS certification as required in subsection (a)(2) of this section;

(B) attend regional updates for course coordinator as required by the department;

(C) maintain association with:

(i) an approved basic or advanced program if recertifying as a basic coordinator;

(ii) an approved advanced program if recertifying as an advanced coordinator;

(D) maintain affiliation with entities which provide clinical and field internship experience;

(E) submit an application for recertification and a nonrefundable fee as in subsection (d) or (e) of this section;

(4) After verification by the department of the information submitted the course coordinator who meets the requirements of subsection (d) or (e) of this section shall be recertified for two years commencing on the date following the expiration of the last certificate.

(k) Late recertification.

(1) An application for recertification shall be considered late if the application and nonrefundable fee are received after the most recent certificate has expired and if all requirements for recertification are not met prior to the end of the most recent certification period.

(2) A course coordinator who has not recertified prior to the end of his most recent certification period is not certified and may not perform the duties of a course coordinator.

(l) To be eligible for recertification, the candidate shall meet the following:

(1) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsections (d) or (e) of this section.

(2) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsections (d) or (e) of this section.

(3) A candidate must complete of all requirements for recertification no later than one year after the expiration of the most recent certificate.

(4) After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of this subsection shall be recertified for two years commencing on the day of issuance of a certificate.

(5) A candidate whose certification is expired more than one year must meet the requirements of subsection (d) or (e) of this section including the completion of another initial course to be certified.

(m) Disciplinary actions.

(1) Administrative penalty. The department may impose an administrative penalty on a course coordinator not to exceed $1,000 per day per violation of the Health and Safety Code or the rules adopted thereunder.

(2) Emergency suspension. The bureau chief of the Bureau of Emergency Management (bureau) may issue an emergency order to suspend an course coordinator's certification if the bureau chief, has reasonable cause to believe continued activity by the individual constitutes a threat to the public health and safety.

(A) An emergency suspension shall be effective immediately without a hearing or notice to the certificate holder. Notice shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department. Notice shall also be given to any sponsoring entity.

(B) If a written request for a hearing is received from the certificate holder within 15 days of the suspension, the department shall conduct a hearing not later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from any disciplinary action related to the hearing shall be governed by the Administrative Procedure Act, Government Code, Chapter 2001.

(3) Suspension or revocation. The department may suspend or revoke a certificate it has issued to an EMS coordinator. A course coordinator's certification may be suspended or revoked for, but not limited to the following:

(A) failing to maintain active status EMS personnel certification at the appropriate level;

(B) failing to comply with the responsibilities of a course coordinator as defined in subsection (h) of this section;

(C) falsifying an application for EMS certification or licensure;

(D) falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;

(E) falsifying a course completion certificate or any other document that records or verifies course activity and/or is a part of the course record;

(F) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception, or misrepresentation;

(G) failing to complete and submit the course applications and student documents within established time frames;

(H) coordinating or attempting to coordinate a course above the coordinator's level of certification;

(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;

(J) allowing inadequate class presentations in a course for which the coordinator is responsible;

(K) demonstrating a lack of supervision of personnel instructing in courses for which the coordinator is responsible;

(L) compromising an examination or examination process administered or approved by the department;

(M) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department, a training program approved by the department, or a provider licensed by the department;

(N) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation, or coercion;

(O) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students, instructors or other class participants;

(P) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(Q) failing to maintain the fiscal integrity of a course for which the coordinator is responsible;

(R) issuing a check to the department which is returned unpaid;

(S) failing to maintain education course records;

(T) demonstrating unwillingness or inability to comply with the Health and Safety Code and/or the rules adopted thereunder;

(U) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;

(V) functioning or attempting to function as a course coordinator during a period of suspension which may be cause for suspension of the coordinator certification; and/or

(W) committing any violation during a probationary period.

(4) Notification. If the department proposes to suspend or revoke a course coordinator's certificate, the course coordinator shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the course coordinator has an opportunity to request a hearing in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(A) The course coordinator may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the bureau chief.

(B) If the course coordinator does not request a hearing within 15 days after the date of the notice of opportunity, the course coordinator waives the opportunity for a hearing and the department shall implement its proposal.

(5) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(6) Reapplication.

(A) Two years after the revocation of a certificate, an individual may petition the department, in writing, for the opportunity to reapply for certification.

(B) The department shall evaluate the petition and may allow or deny the opportunity to reapply for certification.

(C) in evaluating a petition for permission to reapply for certification the department shall consider but is not limited to the following issues:

(i) the likelihood of a repeat of the actions or inactions that led to revocation;

(ii) the petitioners overall record as a course coordinator;

(iii) letters of support or recommendation;

(iv) letters of protest or nonsupport of the petition; and

(v) the need for the services of a course coordinator in the given area the course coordinator would serve.

(D) The petitioner shall be notified of the department's decision to allow or deny the submission of reapplication for certification within 60 days of the submission of the request.

(E) A course coordinator whose certificate expires during a suspension or revocation period may not petition to reapply for certification until the end of the suspension or revocation period.

§157.44. Emergency Medical Service Instructor Certification.

(a) General.

(1) A certified emergency medical service (EMS) instructor is an individual who has received training approved by the Texas Department of Health (department) to conduct the classroom or laboratory portion of an EMS training course.

(2) An instructor must be currently certified as at least an emergency medical technician (EMT) and may not instruct knowledge or skills above his current level of certification.

(3) Instructor certification is dependent on the individual's EMS personnel certification and is subject to the same status as

that personnel certification. If the department imposes disciplinary action in accordance with §157.16 of this title (relating to Emergency Suspension, Suspension, Probation, Revocation or Denial of a Provider License) or §157.36 of this title (relating to Criteria for Denial and Disciplinary Actions for EMS Personnel and Voluntary Surrender of a Certificate or License), the action shall also be imposed automatically and immediately on the individual's instructor's certification.

(b) Certification. To obtain certification, a candidate shall:

(1) have a high school diploma or a general educational development (GED) certificate;

(2) have active EMS personnel certification;

(3) complete a training program using an instructor training curriculum approved by the department;

(4) submit an application to the department with a nonrefundable fee of $50 to the department, except a fee shall not be required if compensation is not received for instructing training courses or programs; and a course completion document from a department-approved instructor course; and

(5) pass the instructor examination conducted by the department.

(c) Currently certified instructors shall be considered to have met the qualifications in this section.

(d) Period of certification. After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of subsection (b) of this section shall be certified as an instructor for two years commencing on the date of issuance of the certificate.

(e) Responsibilities. An instructor shall have the following responsibilities:

(1) conducting classroom and laboratory sessions in accordance with lesson objectives as assigned by the course coordinator;

(2) conducting skills proficiency verifications and other student evaluations as assigned by the course coordinator;

(3) assisting the course coordinator in preparing and maintaining records and performing other duties necessary to insure the integrity, efficiency and effectiveness of the course.

(f) Recertification.

(1) Prior to the expiration of a certificate, the department shall send a notice of expiration to the certificant at the address shown in the current records of the department. It is the responsibility of EMS personnel to notify the department of any change of address.

(2) If a certificant has not received notice of expiration from the department 30 days prior to the expiration, the certificant shall request an application for recertification from the department or download an application from the Internet. Failure to apply for recertification shall result in expiration of the certificate.

(3) To be eligible for recertification, the instructor shall meet recertification requirements during the latest instructor certification period:

(A) maintain active status EMS certification; and

(B) submit the application for recertification and a nonrefundable fee of $50.

(4) After verification by the department of the information submitted, the candidate who meets the requirements of this section shall be recertified for two years commencing on the day following the expiration of the current certificate.

(g) Late recertification.

(1) An application for renewal of a certificate shall be considered late if:

(A) the application and nonrefundable fee are received after the most recent certificate has expired or;

(B) all requirements for recertification are not met prior to the end of the most recent certification period.

(2) An instructor who has not recertified prior to the end of his most recent certification period is not certified.

(h) Recertification. To be eligible for recertification, the candidate shall meet the following:

(1) A candidate whose certificate has been expired for 90 days or less may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to 1-1/2 times the normally required application renewal fee for that level as listed in subsection (b)(4) of this section;

(2) A candidate whose certificate has been expired for more than 90 days but less than one year may renew the certificate by submitting an application and paying a nonrefundable renewal fee that is equal to two times the normally required application renewal fee as listed in subsection (b)(4) of this section.

(3) A candidate must complete all the requirements for recertification no later than one year after the expiration of the most recent certificate.

(4) After verification by the department of the information submitted by the candidate, the candidate who meets the requirements of this subsection shall be recertified for two years commencing on the day of issuance of a certificate.

(5) A candidate whose certification is expired more than one year must meet the requirements of subsection (b) of this section including the completion of another initial course to be certified.

(i) Disciplinary action.

(1) Emergency suspension. The bureau chief of the Bureau of Emergency Management may issue an emergency order to suspend an instructor if the bureau chief has reasonable cause to believe continued activity of the individual constitutes a threat to the public health or safety.

(A) An emergency suspension shall be effective immediately without a hearing or written notice to the certificate holder. Notice to the certificant shall be established on the date that a copy of the signed emergency suspension order is sent to the address shown in the current records of the department, or by return receipt. Notice shall also be sent to any sponsoring entity.

(B) If a written request for a hearing is received from the certificate holder within 15 days of the date of notice, the department shall conduct a hearing not later than the 30th day after the date on which a hearing request is received to determine if the emergency suspension is to be continued, modified, or rescinded. The hearing and appeal from a disciplinary action related to the hearing shall be in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(2) Suspension or revocation. An instructor's certification may be suspended or revoked for, but not limited to, the following reasons:

(A) failing to maintain active status EMS personnel certification at the appropriate level;

(B) failing to comply with the responsibilities of an instructor as in subsection (e) of this section;

(C) falsifying an application for EMS certification;

(D) falsifying a program approval application, a self-study, a course approval application, or any supporting documentation;

(E) falsifying a course completion certificate or any other document that records or verifies course activity and/or is a part of the course record;

(F) compromising department or program standards for verification of skills proficiency or falsifying proficiency verification records;

(G) assisting another to obtain or to attempt to obtain personnel certification or recertification by fraud, forgery, deception or misrepresentation;

(H) failing to complete and submit student documents within the established time frames;

(I) compromising or failing to maintain the order, discipline and fairness of a department-approved course or program;

(J) delivering or allowing inadequate class presentations;

(K) compromising an examination or examination process administered or approved by the department;

(L) cheating or assisting another in cheating on an EMS examination, other evaluation or any other activity offered or conducted by the department, a training program approved by the department, or a provider licensed by the department;

(M) accepting any benefit to which there is no entitlement or benefits in any manner through fraud, deception, falsification, misrepresentation, theft, misappropriation or coercion;

(N) failing to maintain appropriate policies, procedures and safeguards to ensure the safety of students, fellow instructors or other class participants;

(O) allowing recurrent use of inadequate, inoperable, or malfunctioning equipment;

(P) issuing a check to the department which is returned unpaid;

(Q) failing to maintain education course records for initial or continuing education (CE) courses;

(R) demonstrating an unwillingness or inability to comply with the Health and Safety Code and rules adopted thereunder;

(S) failing to give the department true and complete information when asked regarding any alleged or actual violation of the Health and Safety Code, or the rules adopted thereunder, or failing to report a violation;

(T) committing any violation during a probationary period; and

(U) functioning or attempting to function as an instructor during a period of suspension shall be cause for revocation of the instructor certification.

(3) Notification. If the department proposes to take disciplinary action against an EMS instructor, the certificant shall be notified at the address shown in the current records of the department. The notice must state the alleged facts or conduct warranting the action and state that the certificant has an opportunity to request a hearing.

(A) The certificant may request a hearing within 15 days after the date of the notice. This request shall be in writing and submitted to the bureau chief. The hearing shall be conducted pursuant to the Administrative Procedure Act, Government Code, Chapter 2001.

(B) If the certificant does not request a hearing, after being sent the notice of opportunity, the certificant waives the opportunity for a hearing and the department shall implement its proposal.

(4) Probation. The department may probate any penalty assessed under this section and may specify terms and conditions of any probation issued.

(5) Reapplication.

(A) Two years after the revocation of an instructor certification an individual may petition the department, in writing, for the opportunity to reapply for certification.

(B) The department shall evaluate the petition and may allow or deny the opportunity to submit an application for recertification.

(C) In evaluating a petition for permission to reapply for certification the department shall consider, but is not limited to, the following issues:

(i) the likelihood of a repeat of the actions or inactions that led to revocation;

(ii) the petitioners overall record as an instructor;

(iii) letters of support or recommendation;

(iv) letters in protest or nonsupport of the petition; and

(v) the need for the services of an instructor in a given area.

(D) The petitioner shall be notified of the department's decision to allow or deny the submission of reapplication within 60 days of the request.

(E) An instructor whose certificate expires during a suspension or revocation period may not petition to reapply for certification until the end of the suspension or revocation period.

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. EMERGENCY MEDICAL SERVICES COURSE COORDINATOR, PROGRAM INSTRUCTOR, AND EXAMINER CERTIFICATION

25 TAC §§157.61 - 167.64

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. ADVISORY COMMITTEE

25 TAC §157.101

The repeal is adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

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Subchapter G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.121 - 157.128

The repeals are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

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Subchapter G. EMERGENCY MEDICAL SERVICES TRAUMA SYSTEMS

25 TAC §§157.122, 157.123, 157.125, 157.128

The new rules are adopted under the Health and Safety Code, Chapter 773, which provides the Board of Health (board) with the authority to adopt rules to implement the Emergency Medical Services Act; and §12.001, which provides the board with the authority to adopt rules for the performance of every duty imposed by law on the board, the department and the commissioner of health.

§157.122. Trauma Service Areas.

(a) Trauma service areas (TSAs) are established for descriptive and planning purposes and not for the purpose of restricting patient referral.

(b) The state has been geographically divided by counties into 22 TSAs; however:

(1) counties may request the bureau of emergency management (bureau) to re-align them to another TSA per the process in subsection (d) of this section;

(2) each TSA shall have at least a lead general trauma facility within its boundaries by December 31, 2000, or the bureau may re-align the counties in that TSA to other TSAs which have such a facility;

(3) each TSA shall be multi-county with no fewer than three Texas counties; and

(4) a TSA may include areas from other states or countries.

(c) The counties included in the 22 TSAs are grouped as follows (updated lists will be maintained by the bureau):

(1) Area A - Armstrong, Briscoe, Carson, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, Wheeler;

(2) Area B - Bailey, Borden, Castro, Cochran, Cottle, Crosby, Dawson, Dickens, Floyd, Gaines, Garza, Hale, Hockley,

Kent, King, Lamb, Lubbock, Lynn, Mitchell, Motley, Scurry, Terry, Yoakum;

(3) Area C - Archer, Baylor, Clay, Foard, Hardeman, Jack, Montague, Wichita, Wilbarger, Young;

(4) Area D - Brown, Callahan, Coleman, Comanche, Eastland, Fisher, Haskell, Jones, Knox, Nolan, Shackelford, Stephens, Stonewall, Taylor, Throckmorton;

(5) Area E - Collin, Cooke, Dallas, Denton, Ellis, Erath, Fannin, Grayson, Hood, Hunt, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, Wise;

(6) Area F - Bowie, Cass, Delta, Hopkins, Lamar, Morris, Red River, Titus;

(7) Area G - Anderson, Camp, Cherokee, Franklin, Freestone, Gregg, Harrison, Henderson, Houston, Marion, Panola, Raines, Rusk, Shelby, Smith, Trinity, Upshur, Van Zandt, Wood;

(8) Area H - Angelina, Nacogdoches, Polk, Sabine, San Augustine, San Jacinto, Tyler;

(9) Area I - Culberson, El Paso, Hudspeth;

(10) Area J - Andrews, Brewster, Crane, Ector, Glasscock, Howard, Jeff Davis, Loving, Martin, Midland, Pecos, Presidio, Reeves, Terrell, Upton, Ward, Winkler;

(11) Area K - Coke, Concho, Crockett, Irion, Kimble, Mason, McCulloch, Menard, Reagan, Runnels, Schleicher, Sterling, Sutton, Tom Green;

(12) Area L - Bell, Coryell, Falls, Hamilton, Lampasas, Milam, Mills;

(13) Area M - Bosque, Hill, Limestone, McLennan;

(14) Area N - Brazos, Burleson, Grimes, Leon, Madison, Robertson, Washington;

(15) Area O - Bastrop, Blanco, Burnet, Caldwell, Fayette, Hays, Lee, Llano, San Saba, Travis, Williamson;

(16) Area P - Atascosa, Bandera, Bexar, Comal, Dimmit, Edwards, Frio, Gillespie, Gonzales, Guadalupe, Karnes, Kendall, Kerr, Kinney, La Salle, Maverick, Medina, Real, Uvalde, Val Verde, Wilson, Zavala;

(17) Area Q - Austin, Colorado, Fort Bend, Harris, Matagorda, Montgomery, Walker, Waller, Wharton;

(18) Area R - Brazoria, Chambers, Galveston, Hardin, Jasper, Jefferson, Liberty, Newton, Orange;

(19) Area S - Calhoun, Dewitt, Goliad, Jackson, Lavaca, Victoria;

(20) Area T - Jim Hogg, Webb, Zapata;

(21) Area U - Aransas, Bee, Brooks, Duval, Jim Wells, Kenedy, Kleberg, Live Oak, McMullen, Nueces, Refugio, San Patricio; and

(22) Area V - Cameron, Hidalgo, Starr, Willacy.

(d) The realignment of a county may be initiated by the bureau or at the request of either the county government, a licensed health care facility, or a licensed emergency medical services (EMS) provider in that county.

(1) The requesting entity should forward correspondence to the bureau specifying:

(A) reason(s) for realignment request;

(B) existing patient routing patterns used by both EMS providers and health care facilities, including distances and transport times involved in this patient routing;

(C) all entities included in the request and a listing of all other licensed health care facilities and licensed EMS providers in the county; and

(D) documentation that the receiving regional advisory council (RAC) is amenable to the re-alignment.

(2) Copies of the correspondence should be forwarded by the requesting party to all impacted RACs, county governments, licensed health care facilities/EMS providers in the county, and the appropriate Texas Department of Health regional EMS office.

(3) The bureau will evaluate the request based on the impact to patient care and will notify all parties of the decision.

§157.123. Regional Emergency Medical Services/Trauma Systems

(a) The bureau of emergency management (bureau) shall recognize the establishment of a regional emergency medical services (EMS)/trauma system (system) within a trauma service area (TSA) as described in §157.122 of this title (relating to Trauma Service Areas).

(b) Establishment of a regional EMS/trauma system consists of three phases.

(1) The first phase begins with the establishment of a regional advisory council (RAC) and ends with recognition of the RAC by the bureau.

(A) All health care entities who care for trauma patients should be offered membership on the RAC.

(B) The bureau shall recognize only one official RAC for a TSA.

(C) At least quarterly, a RAC shall submit evidence of on-going activity, such as meeting notices and minutes, to the bureau.

(D) Annually, the RAC shall file a report with the bureau which describes progress toward system development, demonstrates on-going activity, and includes evidence that members of the RAC are currently involved in trauma care.

(E) The RAC functions without the expectation of comprehensive, permanent and/or unrestricted state funding.

(F) RACs may request technical assistance from the bureau at any time.

(2) The second phase begins with RAC recognition by the bureau and ends with approval of a complete EMS/trauma system plan (plan) by the bureau.

(A) The RAC shall develop a system plan based on standard guidelines for comprehensive system development. The system plan is subject to approval by the bureau.

(B) The bureau shall review the plan to assure that:

(i) all counties within the TSA have been included unless a specific county, or portion thereof, has been aligned within an adjacent system;

(ii) all health care entities and interested specialty centers have been given an opportunity to participate in the planning process; and

(iii) the following components have been addressed:

(I) injury prevention;

(II) access to the system;

(III) communications;

(IV) medical oversight;

(V) prehospital triage criteria;

(VI) diversion policies;

(VII) bypass protocols;

(VIII) regional medical control;

(IX) regional trauma treatment protocols;

(X) facility triage criteria;

(XI) inter-hospital transfers;

(XII) planning for the designation of trauma facilities, including the identification of the lead facility(ies); and

(XIII) a performance improvement program that evaluates processes and outcomes from a system perspective.

(C) Bureau approval of the completed plan may qualify health care entities participating in the system to receive state funding for trauma care if funding is available.

(3) The third phase begins with approval of a complete plan by the bureau and ends with the regional EMS/trauma system being recognized by the bureau.

(A) Upon approval, a RAC implements the plan to include:

(i) education of all entities about the plan components;

(ii) on-going review of resource, process, and outcome data; and

(iii) if necessary, revision and re-approval of the plan or plan components by the bureau.

(B) At any time following implementation of the plan, a RAC may request recognition as a regional EMS/trauma system which will include:

(i) an on-site review by a team composed of bureau staff and trained non-Texas Department of Health surveyors;

(ii) bureau evaluation of a report developed following the on-site review; and

(iii) notification of the RAC by the bureau of the results of the review.

§157.125. Requirements for Trauma Facility Designation.

(a) The Bureau of Emergency Management (bureau) shall recommend to the commissioner of health (commissioner) the designation of trauma facilities as follows:

(1) Comprehensive (Level I) trauma facility designation, if the applicant hospital meets or exceeds the current American College of Surgeons (ACS) essential criteria for a verified Level I trauma center, actively participates on the appropriate regional advisory council (RAC), and submits data to the state trauma registry;

(2) Major (Level II) trauma facility designation, if the applicant hospital meets or exceeds the current ACS essential criteria for a verified Level II trauma center, actively participates on the appropriate RAC, and submits data to the state trauma registry;

(3) General (Level III) trauma facility designation, if the hospital meets or exceeds the Texas General Trauma Facility Criteria; and

(4) Basic (Level IV) trauma facility designation, if the hospital meets or exceeds the Texas Basic Trauma Facility Criteria.

(b) The designation process shall consist of three phases.

(1) The first phase is the application phase which begins with completing and submitting to the bureau an application and nonrefundable fee for designation as a trauma facility and ends when the bureau approves a site survey (survey);

(2) The second phase is the review phase which begins with the survey and ends with a bureau recommendation to the commissioner to designate the hospital;

(3) The third phase is the final phase which begins with the commissioner reviewing the recommendation and ends with his/her final decision. This phase also includes an appeal procedure for the denial of a designation application in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(c) The bureau's analysis of submitted application materials, which may result in recommendations for corrective action when deficiencies are noted, shall include a review of:

(1) the evidence of participation in system planning;

(2) the completeness and appropriateness of the application materials submitted, including the non-refundable application fee as follows:

(A) for comprehensive and major trauma facility applicants, the fee will be no more than $3.00 per licensed bed with an upper limit of $3000 and a lower limit of $100;

(B) for general trauma facility applicants, the fee will be no more than $2.00 per licensed bed with an upper limit of $2000 and a lower limit of $100; and

(C) for basic trauma facility applicants, the fee will be no more than $1.00 per licensed bed with an upper limit of $1000 and a lower limit of $100.

(d) When the application phase results in a bureau approval for a survey, the bureau shall notify the hospital to contract for the survey, as follows.

(1) Level I and II applicants shall request a survey through the ACS verification program.

(2) Level III and IV applicants may request a survey through the ACS verification program or by a team of approved non-Texas Department of Health (department) surveyors.

(3) The applicant shall notify the bureau of the date of the planned survey and the composition of the survey team.

(4) The applicant shall be responsible for any expenses associated with the survey.

(5) The bureau at its discretion may appoint an observer to accompany the survey team. In this event, the cost for the observer shall be borne by the bureau. A hospital shall have the right to refuse to allow non-department observers to participate in a survey.

(6) The survey shall be completed within one year of the date of the approval of the application.

(7) At any time a hospital may file a complaint with the bureau regarding the conduct of a surveyor. The bureau will investigate the complaint and notify the hospital of the outcome.

(e) The survey team composition shall be as follows.

(1) A survey team for a Level I, Level II, or lead Level III trauma facility applicant, shall be multi-disciplinary and include at a minimum: two general surgeons, an emergency physician, and a trauma nurse all active in the management of trauma patients.

(2) Other Level III trauma facility applicants shall be surveyed by a survey team consisting of a trauma nurse and surgeon active in the management of trauma patients.

(3) Level IV Trauma facility applicants shall be surveyed by a department representative, registered nurse or licensed physician. A second surveyor may be requested by the hospital or the department.

(4) Non-department surveyors must meet the following criteria:

(A) have at least three years experience in the care of trauma patients;

(B) be currently employed in the coordination of care for trauma patients;

(C) have direct experience in the preparation for and successful completion of trauma facility verification/designation;

(D) have successfully completed the department Trauma Facility Site Surveyor Course;

(E) have current credentials as follows:

(i) Trauma Nurse Core Curriculum for nurses; or

(ii) Advanced Trauma Life Support for physicians; and

(F) have successfully completed a site survey internship.

(5) All members of the survey team, except department staff, should come from a public health region and/or RAC outside the hospital's location and at least 100 miles from the applicant hospital. There shall be no business or patient care relationship between the surveyor and/or the surveyor's place of employment and the hospital being surveyed.

(f) When an applicant hospital is notified of the survey team composition, it has 30 days from the date of the letter to alert the bureau of potential conflict of interest concerns.

(g) The survey team shall evaluate the hospital's compliance with the designation criteria, by:

(1) reviewing medical records, staff rosters and schedules, performance improvement committee meeting minutes and other documents specifically relevant to trauma care;

(2) reviewing equipment and the physical plant; and

(3) conducting interviews with hospital personnel.

(h) Findings of the survey team shall be forwarded to the hospital within 30 calendar days of the date of the survey. If a hospital wants to continue the designation process, the complete survey report, including patient care reviews, must be submitted to the bureau within six months of the date of the survey or the application will expire.

(1) The bureau shall review the findings for compliance with the criteria. If a hospital does not meet the criteria for the level of designation for which it applied, the bureau shall notify the hospital of the requirements it must meet to achieve designation at the appropriate level.

(2) A recommendation for designation shall be made to the commissioner based on compliance with the criteria.

(3) In the event there is a problem area in which a hospital does not comply with the criteria, the bureau shall notify the hospital of deficiencies and recommend corrective action.

(A) The hospital shall submit a report to the bureau which outlines the corrective action taken. The bureau may require a second survey to insure compliance with the criteria. If the hospital and/or bureau report substantiates action that brings the hospital into compliance with the criteria, the bureau shall recommend designation to the commissioner.

(B) If a hospital disagrees with a bureau decision regarding its designation application or status, it may request a secondary review by the designation review committee. Membership on the designation review committee will:

(i) be voluntary;

(ii) be appointed by the bureau chief;

(iii) be representative of trauma care providers and all levels of designated trauma facilities; and

(iv) include representation from the department and the Trauma Subcommittee of the statewide emergency systems advisory committee.

(C) If the designation review committee disagrees with the bureau recommendation for corrective action, the records shall be referred to the associate commissioner for health care quality and standards for recommendation to the commissioner.

(i) The bureau shall provide a copy of the survey report, for surveys conducted by or contracted for by the department, and results to the applicant hospital.

(j) At the end of the secondary review and final phases of the designation process, if a hospital disagrees with the bureau recommendations, opportunity for an appeal in accordance with the Administrative Procedure Act, Government Code, Chapter 2001 shall be offered.

(k) The bureau may grant an exception to this section if it finds that compliance with this section would not be in the best interests of the persons served in the affected local system.

(l) The applicant hospital shall have the right to withdraw its application at any time prior to being awarded trauma facility designation by the bureau.

(m) If the commissioner concurs with the recommendation to designate, the hospital shall receive a letter of designation for three years. Additional actions, such as a site review or submission of information, to maintain designation may be required by the department.

(n) It shall be necessary to repeat the designation process as described in this section prior to expiration of a facility's designation or the designation will be considered expired.

(o) A designated trauma facility shall:

(1) notify the bureau and RAC the within five days if temporarily unable to comply with designation standards;

(2) notify the bureau and the RAC if it chooses to no longer provide trauma services commensurate with its designation level, as follows.

(A) If the trauma facility chooses to apply for a lower level of designation, it may do so at any time; however, it shall be necessary to repeat the designation process as described in subsections (b) - (c) of this section. There shall be a paper review by the bureau to determine if a full survey shall be required.

(B) If the trauma facility chooses to permanently relinquish its designation, it shall provide at least 30 days notice to the RAC and the bureau.

(3) comply with the provisions within these sections, all current state and system standards as described in this chapter, and all policies, protocols, and procedures as set forth in the system plan;

(4) continue its commitment to provide the resources, personnel, equipment, and response as required by its designation level; and

(5) participate in the state trauma registry.

(p) A health care facility may not use the terms "trauma facility", "trauma hospital", "trauma center", or similar terminology in its signs or advertisements or in the printed materials and information it provides to the public unless the health care facility has been designated as a trauma facility according to the process described in this section. This subsection also applies to hospitals whose designation has lapsed.

(q) A trauma facility shall not advertise or publicly assert in any manner that its trauma facility designation affects its care capabilities for non-trauma patients or that its trauma facility designation should influence the referral of non-trauma patients.

(r) The bureau shall have the right to review, inspect, evaluate, and audit all trauma patient records, trauma performance improvement committee minutes, and other documents relevant to trauma care in any designated trauma facility at any time to verify compliance with the statute and these rules, including the designation criteria. The bureau shall maintain confidentiality of such records to the extent authorized by the Government Code, Chapter 552, Public Information. Such inspections shall be scheduled by the bureau when appropriate.

(s) General (Level III) trauma facility criteria.
Figure: 25 TAC §157.125(s)

(t) Basic (Level IV) trauma facility criteria.
Figure: 25 TAC §157.125(t)

§157.128. Denial, Suspension, and Revocation of Trauma Facility Designation.

(a) A hospital's application for designation may be denied or a trauma facility's (facility) designation may be suspended or revoked for, but not limited to, the following reasons:

(1) failure to comply with the statute and these sections;

(2) willful preparation or filing of false reports or records;

(3) fraud or deceit in obtaining or attempting to obtain designation status;

(4) refusal to submit data to the state trauma registry;

(5) failure to maintain required licenses, designations, and accreditations or when disciplinary action has been taken against the hospital by a licensing agency;

(6) failure to have appropriate staff or equipment required for designation as described in §157.125 of this title (relating to Requirements for Trauma Facility Designation);

(7) abuse or abandonment of a patient;

(8) unauthorized disclosure of medical or other confidential information;

(9) alteration or inappropriate destruction of medical records;

(10) refusal to render care because of a patient's race, sex, creed, national origin, sexual preference, age, handicap, medical problem, or inability to pay; or

(11) criminal conviction(s) as described in the Occupations Code, Chapter 53, Subchapter B.

(b) Occasional failure of a hospital or facility to meet designation criteria shall not be grounds for denial, suspension or revocation by the Bureau of Emergency Management (bureau), if the circumstances under which the failure occurred:

(1) do not reflect an overall deterioration in quality of and commitment to trauma care; and

(2) are corrected within a reasonable timeframe by the hospital or facility.

(c) If the bureau proposes to deny, suspend, or revoke a designation, the bureau shall notify the hospital or facility at the address shown in the current records of the department. The notice shall state the alleged facts that warrant the action and state that the hospital or facility has an opportunity to request a hearing in accordance with the Administrative Procedure Act, Government Code, Chapter 2001.

(1) The hospital or facility shall request a hearing in writing and submit it to the bureau chief within 15 days after the date of the denial, suspension, or revocation notice.

(2) If the hospital or facility does not request a hearing in writing, after being sent the notice of opportunity for hearing, it is deemed to have waived the opportunity for a hearing and the denial, suspension, or revocation decision shall stand.

(d) Six months after the denial of a hospital's application for designation, the hospital may reapply for trauma facility designation as described in §157.125 of this title.

(e) When a designation has been suspended, the suspension shall be in effect a minimum of 10 days. Upon completion of the assigned suspension time, designation shall resume.

(f) One year after the revocation of a facility designation, the hospital may reapply for designation as described in §157.125 of this title. The bureau may deny designation if the bureau determines that the reason for the revocation continues to exist.

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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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 28. INSURANCE

Part 1. TEXAS DEPARTMENT OF INSURANCE

Chapter 5. PROPERTY AND CASUALTY INSURANCE

Subchapter J. RULES TO IMPLEMENT THE AMUSEMENT RIDE SAFETY INSPECTION AND INSURANCE ACT

28 TAC §§5.9001 - 5.9014

The Commissioner of Insurance adopts amended §§5.9001 - 5.9014, concerning rules to implement the Amusement Ride Safety Inspection and Insurance Act (the Act). The amended sections are adopted without change to the proposed text as published in the March 10, 2000, issue of the *Texas Register* (25 TexReg 1966) and will not be republished.

The amended sections are necessary to implement legislation enacted by the 76th Legislature in House Bill 1059. House Bill 1059 amended and added certain sections to Chapter 2151, Title 13, Occupations Code and to the Penal Code which set forth requirements for amusement rides in this state. Among other things, the legislation specifies new reporting requirements for persons who operate amusement rides and further requires the commissioner to adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides, including rules requiring daily inspections of safety restraints, and rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. The department interviewed representatives from the amusement ride industry, observed the operation of various outdoor amusement parks, and researched the literature regarding amusement rides in implementing the new legislation. The department also obtained examples of the industry's offerings of other similar safety signs in developing the requirements for the sign required by the new legislation. Currently, there are 134 fixed amusement ride parks in Texas and approximately 128 traveling shows that contain mobile amusement rides located and operating in Texas which are on file with the department. The purpose of the amendments is to administer the law regarding the regulation of amusement rides and to set forth the rules for the inspections, reporting, and sign requirements as set forth in the statute.

Amended §5.9001 updates the references to re-codified sections of the Insurance Code and clarifies the reference to "inspector" in accord with the Act. Amended §5.9002 conforms the definitions to the newly enacted legislation. Amended §5.9003 increases the fee to $40 per year for each amusement ride as set forth in the new legislation and updates the revised TDI form AR-100 (Amusement Ride Certificate of Inspection/Re-Inspection). Amended §5.9004 contains updated references to statutes and adds the new requirements of House Bill 1059 regarding inspections, inspection certificates, and mobile amusement ride inspections, including daily inspection requirements. It further implements the enforcement section of the Act regarding the requirements that must be met before an amusement ride may resume operation after its operation has been prohibited. It also adopts by reference a new form, TDI Form AR-300 (Daily Inspection Record), specifying the daily inspection requirements for mobile amusement rides including safety restraints on each mobile amusement ride. It further adopts by reference a new form, TDI Form AR-101 (Texas Amusement Ride Compliance Sticker), which replaces the current AR-101 form. This weatherproof form is returned with each inspection certificate as confirmation of the required insurance and inspection certificate pursuant to the Act and is affixed to the appropriate amusement ride or device in a place easily visible to all ride participants. The form has been re-formatted and re-designed in accord with the updated requirements of legislation. The amended section has also revised the requirements regarding the schedule of operating locations for mobile operations, which is currently included on the inspection certificate, by adopting by reference new TDI Form AR-102, Amusement Ride Schedule of Operations in Texas. This new form requires a schedule of operating locations and dates for each six-month period for mobile operations instead of the current one-year period in order to achieve more complete reporting. It also provides for an amended TDI Form AR-102 to be filed in the event of any changes in the schedule. The amended section also clarifies that combined single limit policies are not acceptable unless the policy specifically provides at least the minimum limits for injury to persons as required by the Act. Amended §5.9005 deletes certain references to training and experience of inspectors to reflect the requirements of the statute, as amended by House Bill 1059, concerning the duties of an insurer or a person with whom the insurer has contracted in regard to the inspection of amusement rides. The department amended §5.9006 by stating the new legislative requirements of a sign to be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. The amendment specifies the content and size requirements of the sign and requires that the sign be posted at the principal entrance(s) to the site at which an amusement ride is located or at any location on that site at which tickets for an amusement ride are available. It must be printed in both English and Spanish. The amended section further deletes the requirements regarding the designation of safety inspector for amusement rides and devices and deletes the form referenced therein (titled "Qualification Review for Inspectors of Carnival–Amusement Rides and Devices," TDI AR-200). Amended §5.9007 adds the requirements for the recording and reporting of any governmental action taken in any state relating to an amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride. The section defines governmental action and adopts by reference a governmental action quarterly reporting form. The amended section also requires, for inspection by law enforcement officials, the maintaining of photocopies of the quarterly reports required by the section for a period of not less than two years at any location where the ride is operated. The amended section further clarifies that the quarterly injury reports must record each injury caused by the amusement ride in any state in which injury results in death or requires medical treatment and also revises the quarterly injury report form. It also specifies that an injury is caused by the ride if the

injury occurs on the ride or is in any way associated with the ride. Amended §§5.9008 - 5.9010 are updated to conform to the increased fee requirement of House Bill 1059, to reference re-codified statutes and revised forms, and to delete unnecessary language. The department amends §5.9011 regarding the operator/operational requirements, and the individual standards referenced therein, by setting forth the standardized compliance and standards for an amusement ride covered by the Act that is sold, maintained, or operated in this state. The standards of the American Society for Testing and Materials are minimum standards in this regard, and to the extent that those standards conflict with the requirements of the Act, the more stringent requirement or standard applies. Amended §5.9012 incorporates the new enforcement provisions of House Bill 1059 regarding entry and inspection of any amusement ride at any time by a municipal, county, or state law enforcement official and also references the duties of an owner/operator of an amusement ride regarding providing documents and cooperating in the prohibiting of operation of an amusement ride. Amended §5.9013 and §5.9014 are updated to conform to the new classification of offense (Class B misdemeanor) for violation of certain sections of the Act or any rule adopted by the commissioner under §§2151.101 - 2151.103 of the Act. Section 5.9014 is also amended to reflect the statutory requirement that a prosecuting attorney report to the department a conviction of an offense under §2151.153 of the Act.

The effective date of the revised and new forms is May, 2000.

Comment: Several commenters stated that the proposal calls for a 10-day notice of route changes, and since the commenters stated that amusement ride bookings can change quickly, they asked that the rules require a 48-hour notice of change in schedule of operations.

Agency Response: The department believes that the amendments address the commenters' concerns. Amended §5.9004(5) sets forth the requirements for the schedule of operations to be filed by the owner/operator for each six-month period for mobile operations. While the amended section calls for the six-month schedule to be filed a minimum of 10 days in advance of each six-month period, any changes in that schedule must be submitted within 10 days of such change. Advance notice of the change is not required. Once the owner/operator knows of the route change, he has 10 days to notify the department by filing an amended TDI Form AR-102, and he can still proceed with his route change. The change in time frames is in recognition of the fact that amusement ride bookings can change quickly.

Comment: Commenters also stated that reportable governmental actions required to be disclosed on the department's quarterly report are unclear, and they request additional instructions and examples.

Agency Response: The department disagrees that this is necessary. The Quarterly Governmental Action Report (TDI Form AR-801) requires the report of "any governmental action taken in any state relating to that particular amusement ride, including an inspection resulting in the repair or replacement of equipment used in the operation of the amusement ride." The form further states that the report must be made in accordance with the Amusement Ride Act and the rules governing same. The rules setting forth the requirements of the governmental action report contain the definition of "governmental action" in §5.9007(b)(2), and the commenters are referred to that definition in order to fill out the Quarterly Governmental Action Report form.

Comment: Commenters further proposed that a form be developed for completion by a peace officer who closes an amusement ride, as well as a form that is prepared by the operator indicating that corrective action has been taken, and that these forms be maintained at the carnival office.

Agency Response: The department disagrees. It is not within the authority of the department to require law enforcement officials to complete any type of documentation when closing an amusement ride. The statute allows law enforcement officials to determine compliance with the law in accord with their own procedures. Regarding the suggestion of promulgating another form for an operator indicating that corrective action has been taken, the department believes that the statute sets forth the various options for the operator to take in order to demonstrate compliance once an amusement ride's operation has been prohibited, and therefore, another form is not necessary. Further, the reporting of the prohibition of the ride and description of corrective action taken must be reported on the Quarterly Governmental Action Report (TDI Form AR-801), and this form should be used for that purpose.

Comment: Commenters stated that the rules require that a ride be re-inspected after an injury or death, and that the statute calls for re-inspection after death; therefore, the commenters would like additional clarification on the intent of the department on this matter.

Agency Response: The department has not changed the rules regarding re-inspection after any injury or death involving equipment failure, structural failure, or operator error on an amusement ride/device (28 TAC §5.9004(2)(G)(iv)). The statutory requirements referred to by the commenters speak to a death occurring on a mobile amusement ride and the procedures to follow before the mobile amusement ride may resume operating. The department has incorporated these statutory requirements regarding mobile amusement rides into the amendments in addition to the existing rules regarding re-inspection after any injury or death involving equipment failure, structural failure, or operator error on an amusement ride/device. The department believes that these rules are in the best interest and safety of amusement ride patrons. Further, it is in the best interest and safety of amusement ride patrons for the ride and ride operator to be performing in compliance with manufacturers' recommendations, American Society of Testing and Materials standards, or insurers' standards, whichever are the most stringent. A re-inspection of the ride will ensure that these standards are being met.

Comment: One commenter supported the proposal and thanked staff for its efforts in communicating the requirements of the legislation. This commenter described the learning process inherent in the new law and his experience with local law enforcement in the setting up of his carnival operation in one particular location. The commenter expressed concern about the rules and what will actually be considered "governmental action" by local law enforcement or other states' agencies, for example, where a law enforcement official or state inspector makes a verbal statement that a ride should be shut down.

Agency Response: The department appreciates the comments. Regarding the concern of the commenter about "governmental action," the department believes that law enforcement officials and state inspectors are well-trained and know how to be as-

sertive and communicate what they want in terms of compliance with the law.

Comment: One commenter supported the proposal, said that he was glad that American Society of Testing and Materials standards are in the law and regulations, and stated his belief that the most effective ride inspection safety programs are at the state level. This commenter stated that, according to federal government statistics, the likelihood of being fatally injured on an amusement ride is 1 in 450 million, and that with the state and the amusement ride industry working together, problems can be avoided. The commenter commended the staff for what the commenter called outstanding rules, but also expressed concerns about "overzealous" local law enforcement officials. The commenter also stated that he did not think that the public information sign was readable from 25 feet and suggested that the requirement be 15 feet.

Agency Response: The department appreciates the comments and reiterates its previous response regarding the training of law enforcement personnel. Regarding the distance of readability of the sign, the department conducted several experiments involving the variables of point size of type, size of sign, color of sign, and distance in developing the 25 foot requirement and the other specifications for the sign. The department will, however, continue to evaluate the distance requirement and the other requirements as the rules are implemented.

For: Thomas Carnival, Outdoor Amusement Business Association, Inc., and eight amusement ride operators.

The amended sections are adopted pursuant to Title 13, Occupations Code, Chapter 2151, and the Insurance Code §36.001. The 76th Legislature enacted House Bill 1059, which amended and added certain sections to Chapter 2151, Title 13, Occupations Code and to the Penal Code which sets forth requirements for amusement rides in this state. Among other things, the legislation specifies new reporting requirements for persons who operate amusement rides and further requires the commissioner to adopt rules requiring operators of mobile amusement rides to perform inspections of mobile amusement rides and rules requiring that a sign be posted to inform the public how to report an amusement ride that appears to be unsafe or to report an amusement ride operator who appears to be violating the law. Insurance Code §36.001 authorizes the Commissioner of Insurance to adopt rules for the conduct and execution of the duties and functions of the Texas Department of Insurance only as authorized by statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2000.

TRD-200002649

Lynda Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 4, 2000

Proposal publication date: March 10, 2000

For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

Part 9. TEXAS ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

Chapter 286. ON-SITE WASTEWATER TREATMENT RESEARCH COUNCIL

The Texas On-Site Wastewater Treatment Research Council (Council) adopts new Chapter 286 containing §§286.1, 286.2, 286.9, 286.14, 286.31, 286.32, 286.34, 286.51-286.53, 286.74, 286.91-268.98 and 286.131 concerning the On-Site Wastewater Treatment Research Council under TAC Title 31 (relating to Natural Resources and Conservation). This adopted new chapter will replace existing Chapter 286 concerning the On-Site Wastewater Treatment Research Council under TAC Title 30 (relating to Environmental Quality). Chapter 286 is adopted without changes to the proposed text as published in the January 28, 2000, issue of the *Texas Register* (25 TexReg 547) and will not be republished.

EXPLANATION OF THE ADOPTED RULES

The Council adopted new Chapter 286 to move its rules to Title 31, Part 9, relating to the Texas On-Site Wastewater Treatment Research Council, to provide for clearer administration of its programs as a separate state agency from the Texas Natural Resource Conservation Commission (the Commission). Currently the Council rules are imbedded within Title 30, Part I, which is reserved for rules of the Commission. As per the Texas Health and Safety Code, Chapter 367, relating to the On-Site Wastewater Treatment Research Council, the Council is a separate state agency for which the Commission provides staff and other administrative support.

While the entire adopted chapter is new, there are only a few changes from the existing rules that are being adopted by the Council. These are amendments to §286.2 (relating to Definitions), §286.34 (relating to Indemnification), §286.51 (relating to Applied Research Grants), §286.52 (relating to Demonstration and Monitoring Grants), §286.53 (relating to Technology Transfer Grants), §286.74 (relating to Mailing Address), §286.91 (relating to Receipt of Proposals), §286.92 (relating to Council Review), §286.93 (relating to Discussions of Proposals), §286.96 (relating to Awards), and §286.131 (relating to Grants and Donations). Throughout the rules, cross references and citations to other statutes have been updated.

The Council did not propose that the following existing sections be carried over to new Chapter 286: §286.3 (relating to Meetings), §286.4 (relating to Transaction of Official Business), §286.5 (relating to Attendance), §286.6 (relating to Agendas), §286.7 (relating to Minutes), §286.8 (relating to Elections), §286.10 (relating to Committees), §286.11 (relating to Executive Secretary), §286.12 (relating to Reimbursement for Expenses), §286.13 (relating to Official Record), §286.14 (relating to Impartiality and Non-discrimination), and §286.33 (relating Funding). The Council found that these sections were redundant with the statute and their absence will provide the Council with more flexibility in addressing its internal management and organization.

The adopted new Subchapter A (relating to Council Procedures) now consists of the existing §286.1 (relating to Purpose and Scope), §286.2 (relating to Definitions), §286.9 (relating to Officers), and §286.14 (relating to Impartiality and Nondiscrimination) under Title 30. The adopted subchapter contains changes from existing §286.2(a)(9) under Title 30, to cor-

rect the name of the Uniform Grant Management Standards from Uniform Grant and Contract Management Standards as cited in the Texas Government Code, Chapter 783, and the rules promulgated under 1 TAC §§5.141-5.167.

The adopted new Subchapter B (relating to Grants) now consists of the existing §286.31 (relating to Purpose), §286.32 (relating to Council Objectives), §286.34 (relating to Indemnification), §286.51 (relating to Applied Research Grants), §286.52 (relating to Demonstration and Monitoring Grants), §286.53 (relating to Technology Transfer Grants), §286.74 (relating to Mailing Address), §286.91 (relating to Receipt of Proposals), §286.92 (relating to Council Review), §286.93 (relating to Discussion of Proposals), §286.94 (relating to Status of Proposals), §286.95 (relating to Decision Making), §286.96 (relating to Awards), §286.97 (relating to Denials), and §286.98 (relating to Tabling Decision) under Title 30.

The adopted new §286.34 now contains changes from the existing §286.34 under Title 30, relating to Indemnification, to clarify language regarding indemnification of the Council due to the action resulting from grantee's performance under the grant award. The Council does not believe that the receipt of a grant award by the grantee will result in liability, but the Council wishes to ensure that the state will not be subject to liability based on grantee's conduct in performance of the grant contract.

The adopted new §286.51 now contains changes from the existing §286.51, relating to Applied Research Grants under Title 30, to add language consistent with the requirements of Texas Health and Safety Code, §367.008(b)(1), and to clarify language regarding unsolicited proposals.

The adopted new §286.52 now contains changes from the existing §286.52, relating to Demonstration and Monitoring Grants under Title 30, to add language to describe a demonstration and monitoring project, make a distinction between solicited and unsolicited projects, and delete the restriction of awarding only one grant per designated period.

The adopted new §286.53 now contains changes from the existing §286.53, relating to Technology Transfer Grants under Title 30, to clarify language regarding unsolicited proposals.

The adopted new §286.91 and §286.92 now contain changes from the existing §286.91, relating to Receipt of Proposals under Title 30, to clarify that the Council is not required to review the proposals at the next meeting and changes from existing §286.92, relating to Council Review under Title 30, to clarify the amount of time required for the Council members to review proposals.

The adopted new §286.93 now contains changes from existing §286.93, relating to Discussion of Proposals under Title 30, to clarify when the proposals will be discussed and that the proposal will be included on the agenda to be posted with the open meeting notice.

The adopted new §286.96 now contains changes from existing §286.96, relating to Awards under Title 30, to clarify that a written contract is required to be executed before receiving any funds and to add language to clarify the intent of the Council to fund indirect costs only if required by law to better utilize the funds for research, demonstration, and technology transfer projects.

The adopted new Subchapter C (relating to Grants and Donations to the Council) now consists of the existing §286.131 (relating to Grants and Donations) under Title 30.

FINAL REGULATORY IMPACT ANALYSIS

The Council reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the Texas Government Code.

TAKINGS IMPACT ASSESSMENT

The Council has prepared a takings impact assessment for these rules pursuant to Texas Government Code, §2007.043. The purpose of this rulemaking is to eliminate redundancy in the rules and to clarify, correct, and add procedures for awarding grants and distributing grant money. Therefore, these new adopted rules will not constitute a takings under Texas Government Code, Chapter 2007.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW

The Council has determined that this rulemaking does not relate to an action subject to the Texas Coastal Management Program in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code, §§33.201 et seq.).

HEARING AND COMMENTERS

A public hearing was not held for this rulemaking. The comment period closed on February 27, 2000. No comments were received.

Subchapter A. COUNCIL PROCEDURES

31 TAC §§286.1, 286.2, 286.9, 286.14

STATUTORY AUTHORITY

The new sections are adopted under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money.

No other codes, statutes, or rules will be affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2000.

TRD-200002643
Warren Samuelson
Executive Secretary
Texas On-Site Wastewater Treatment Research Council
Effective date: May 4, 2000
Proposal publication date: January 28, 2000
For further information, please call: (512) 239-4799

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Subchapter B. GRANTS

31 TAC §§286.31, 286.32, 286.34, 286.51-286.53, 286.74, 286.91-286.98

STATUTORY AUTHORITY

The new sections are adopted under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money.

No other codes, statutes, or rules will be affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2000.

TRD-200002644
Warren Samuelson
Executive Secretary
Texas On-Site Wastewater Treatment Research Council
Effective date: May 4, 2000
Proposal publication date: January 28, 2000
For further information, please call: (512) 239-4799

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Subchapter C. GRANTS AND DONATIONS TO THE COUNCIL

31 TAC §286.131

STATUTORY AUTHORITY

The new section is adopted under the authority and effect the provisions of Texas Health and Safety Code, §367.008, which authorizes the Council to establish procedures for awarding competitive grants and disbursing grant money.

No other codes, statutes, or rules will be affected by this adoption.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 14, 2000.

TRD-200002645
Warren Samuelson
Executive Secretary
Texas On-Site Wastewater Treatment Research Council
Effective date: May 4, 2000
Proposal publication date: January 28, 2000
For further information, please call: (512) 239-4799

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part 9. TEXAS COMMISSION ON JAIL STANDARDS

Chapter 259. NEW CONSTRUCTION RULES

Subchapter B. NEW MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.136

The Texas Commission on Jail Standards adopts the amendment to §259.136 concerning New Maximum Security Design, Construction and Furnishing Requirements without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register*(25 TexReg 1258).

The rule is being amended to provide clarification of existing standards regarding design requirements for day room space.

The rule clarifies the minimum requirements of day room space in New Maximum Security Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002628
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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37 TAC §259.138

The Texas Commission on Jail Standards adopts the amendment to §259.138 concerning New Maximum Security Design, Construction and Furnishing Requirements with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1259).

The rule is being amended to limit the amount of time an inmate is held in a holding cell to no more than 48 hours. Changes have been made to §259.138(a)(6) of the proposed text to withdraw the requirement that phones, if provided be detention type and cordless in order to further evaluate the impact of implementing the rule change.

The rule defines time limits for holding inmates in holding cells for New Maximum Security Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the custody, care and treatment of prisoners.

§259.138. Holding Cells.

(a) One or more holding cells shall be provided to hold inmates pending intake, processing, release, or other reason for temporary holding. Inmates shall not be held for more than 48 hours and the cell shall include the following features.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for the first inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

(b) Remote Holding Cells. Holding cells that are separate from the facility and utilized for direct court holding, processing, or for inmates awaiting transportation. Inmates shall not be held for more than 8 hours and the cell shall include the following features.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" above the finished floor, and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories capable of providing drinking water, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for the first inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

(6) Smoke Detection. Smoke detection capability shall be provided. The alarm shall annunciate at a staffed location in close proximity to the cell. Additional life safety items shall be compatible with the remainder of the building.

(7) Audible Communication. Audible communications shall be provided.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002629
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Subchapter C. NEW LOCKUP DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.233

The Texas Commission on Jail Standards adopts the amendment to §259.233 concerning New Lockup Design, Construction and Furnishing Requirements without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1260).

The rule is being amended to clarify existing standards regarding design requirements for day room space.

The rule clarifies the minimum requirements of day room space in New Lockup Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511, which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance, and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002630
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Subchapter D. NEW MEDIUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.330

The Texas Commission on Jail Standards adopts the amendment to §259.330 concerning New Medium Security Design, Construction and Furnishing Requirements without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1261).

The rule is being amended to clarify existing standards regarding design requirements for day room space.

The rule clarifies minimum requirements for day room space in New Medium Security Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002631
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Subchapter E. NEW MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.430

The Texas Commission on Jail Standards adopts amendment to §259.430 concerning New Minimum Security Design, Construction and Furnishing Requirements without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1261).

The rule is being amended to clarify existing standards regarding design requirements for day room space.

The rule clarifies minimum requirements for day room space in New Minimum Security Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002632
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Subchapter H. NEW LONG-TERM INCARCERATION DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §259.738

The Texas Commission on Jail Standards adopts the amendment to §259.738 concerning New Long-Term Incarceration Design, Construction and Furnishing Requirements without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1262).

The rule is being amended to clarify existing standards regarding design requirements for day room space.

The rule clarifies minimum standards for day room space in New Long-Term Incarceration Designs.

No comments were received regarding the amendment.

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002633
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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37 TAC §259.740

The Texas Commission on Jail Standards adopts the amendment to §259.740 concerning New Long-Term Incarceration Design, Construction and Furnishing Requirements with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1262).

The rule is being amended to limit the amount of time an inmate is held in a holding cell to no more than 48 hours. Changes have been made to §259.740(a)(6) of the proposed text to withdraw the requirement that phones, if provided be detention type and cordless in order to further evaluate the impact of implementing the rule change.

The rule provides time limits for holding inmates in holding cells in New Long-Term Incarceration Designs.

No comments were received after publication in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1262).

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§259.740. Holding Cells.

(a) One or more holding cells shall be provided to hold inmates pending intake, processing, release, or other reason for temporary holding. An appropriate space shall be designated for staging inmates. Inmates shall not be held for more than 48 hours and the cell shall include the following features.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity.

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains.

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined.

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned.

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002634
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Chapter 261. EXISTING CONSTRUCTION RULES

Subchapter A. EXISTING MAXIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.138

The Texas Commission on Jail Standards adopts the amendment to §261.138 concerning Existing Maximum Security Design, Construction and Furnishing Requirements with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1264).

The rule is being amended to limit the amount of time an inmate is held in a holding cell to no more than 48 hours. Changes have been made to §261.138(a)(6) of the proposed text to withdraw the requirement that phones, if provided be detention type and cordless in order to further evaluate the impact of implementing the rule change.

The rule provides time limits for holding inmates in holding cells in Existing Maximum Security Designs.

No comments were received after publication in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1264).

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§261.138. Holding Cells.

(a) One or more holding cells should be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Inmates shall not be held for more than 48 hours and the cell shall include the following features.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 14" to 18" above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from 1 to 24 inmates and shall contain not less than 40 square feet of floor space for 1 inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell should be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

(b) Remote Court Holding Cells. Holding cells that are separate from the facility and utilized for direct court holding, processing, or for inmates awaiting trial shall include the following features and equipment:

(1) Seating. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2) Plumbing. Cells shall be provided with adequate toilets, and lavatories capable of providing drinking water. Floor drains should be provided;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from 1 to 24 inmates and shall contain not less than 40 square feet of floor space for 1 inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material should be durable and easily cleaned;

(5) Supervision. The cell should be located and constructed to facilitate supervision of the cell area and to materially reduce noise;

(6) Smoke Detection. Smoke detection capability shall be provided. The alarm shall enunciate at a staffed location in close proximity to the cell. Additional life safety items shall be compatible with the remainder of the building;

(7) Audible Communication. Audible communications shall be provided.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002635
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Subchapter C. EXISTING MINIMUM SECURITY DESIGN, CONSTRUCTION AND FURNISHING REQUIREMENTS

37 TAC §261.332

The Texas Commission on Jail Standards adopts the amendment to §261.332 concerning Existing Minimum Security Design, Construction and Furnishing Requirements with changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1265).

The rule is being amended to limit the amount of time an inmate is held in a holding cell to no more than 48 hours. Changes have been made to §261.332(6) of the proposed text to withdraw the requirement that phones, if provided be detention type and cordless in order to further evaluate the impact of implementing the rule change.

The rule provides time limits for holding inmates in holding cells in Existing Minimum Security Designs.

No comments were received after publication in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1265).

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§261.332. Holding Cells.

Inmates shall not be held for more than 48 hours and the cells, if provided, shall include the following features.

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 14" to 18" above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from 1 to 24 inmates and shall contain not less than 40 square feet of floor space for 1 inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell should be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002636
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Chapter 271. CLASSIFICATION AND SEPARATION OF INMATES

The Texas Commission on Jail Standards adopts the amendments to §§271.1 and 271.7 concerning Classification and Separation of Inmates. Section 271.1 is being adopted with changes to proposed text and §271.7 is being adopted without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1266) and will not be republished.

The rule is being amended to allow for separate classification plans for Texas Department of Criminal Justice and Federal inmates.

The rule defines the minimum standards of objective classification.

Comments were received regarding proposed changes to 271.1.

Comment: Suggests clarifying classification policies for federal inmates by including language in the standards similar to that used for classification policies of TDCJ-ID inmates.

Response: Adopt with changes due to comments.

37 TAC §271.1

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

§271.1. Objective Classification Plan.

(a) Each sheriff/operator shall develop and implement an objective classification plan approved by the Commission by January 1, 1997. The plan shall include principles, procedures, instruments and explanations for classification assessments, housing assignments, reassessments and inmate needs. Plans utilizing an approved objective classification system shall be submitted and approved by the Commission. The following principles and procedures shall be addressed:

(1) inmates shall be classified and housed in the least restrictive housing available without jeopardizing staff, inmates or the public, utilizing risk factors which include any or all of the following:

(A) current offense or conviction;

(B) offense history;

(C) escape history;

(D) institutional disciplinary history;

(E) prior convictions;

(F) alcohol and/or drug abuse; and

(G) stability factors.

(2) classification criteria shall not include race, ethnicity or religious preference;

(3) custody levels and special housing needs shall be assessed to include minimum, medium and maximum custody levels

and the placement and release of inmates to and from special units including protective custody, administrative separation, disciplinary separation and mental and medical health housing;

(4) minimum and maximum custody level inmates shall be housed separately. All other custody level inmates should be housed separately. When under direct, visual supervision, inmates of different custody levels may simultaneously participate in work and program activities;

(5) juveniles shall be separated by sight and sound from adults in accordance with the Family Code, §51.12;

(6) female inmates shall be separated by sight and sound from male inmates. When under direct, visual and proximate supervision, males and females may simultaneously participate in work and program activities;

(7) when housed together and separately from all other inmates, contracted TDCJ-ID and federal inmates may be classified solely by approved TDCJ-ID and federal classification policies and procedures, respectively. Housing units for contracted TDCJ-ID and federal inmates shall be approved by TDCJ-ID and federal officials, respectively, to ensure that the inmates' custody level does not exceed the construction security level of the assigned housing.

(8) persons assigned to a detoxification cell shall be transferred to a housing or holding area as soon as they can properly care for themselves;

(9) the status of persons confined to a violent cell shall be reassessed and documented at least every 24 hours for continuance of status;

(10) inmates who require protection or those who require separation to protect the safety and security of the facility may be housed in administrative separation. The status of inmates placed in administrative separation shall be reviewed and documented at least every 30 days for continuance of status. Inmates housed in administrative separation shall retain access to services and activities, unless the continuance of the services and activities would adversely affect the safety and security of the facility; and

(11) single cells may be utilized for disciplinary or administrative separation. Inmates in administrative separation shall be provided access to a day room for at least one hour each day. Inmates in disciplinary separation shall be provided a shower every other day.

(b) The following classification procedures shall be conducted utilizing the approved classification instruments.

(1) Intake Screening. To be completed immediately on all inmates admitted for purposes of identifying any medical, mental health or other special needs that require placing inmates in special housing units;

(2) Initial Custody Assessment. To be completed on all newly admitted inmates prior to housing assignments to determine custody levels.

(3) Custody Reassessment/Review. A custody reassessment shall be conducted within 30 - 90 days of the Initial Custody Assessment and immediately upon any disciplinary action and/or change in legal status which would affect classification. A documented classification review to determine the necessity for a complete reassessment shall be conducted every 30 - 90 days thereafter.

(c) A Needs Assessment Instrument may be used to assess the needs and qualifications of inmates for participation in vocational, educational, mental health, substance abuse and other treatment or work programs.)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002637
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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37 TAC §271.7

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002638
Jack E. Crump
Executive Director
Texas Commission on Jail Standards
Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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Chapter 283. DISCIPLINE AND GRIEVANCES

37 TAC §283.1

The Texas Commission on Jail Standards adopts the amendment to §283.1 concerning Discipline and Grievances without changes to the proposed text as published in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1269).

The rule is being amended to allow for separate discipline procedures for Texas Department of Criminal Justice and Federal inmates

The rule defines minimum standards for discipline.

No comments were received after publication in the February 18, 2000, issue of the *Texas Register* (25 TexReg 1269).

The amendment is adopted under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on April 13, 2000.

TRD-200002639
Jack E. Crump
Executive Director
Texas Commission on Jail Standards

Effective date: May 3, 2000
Proposal publication date: February 18, 2000
For further information, please call: (512) 463-5505

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REVIEW OF AGENCY RULES

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) proposes to review Title 4, Texas Administrative Code, Part 1, Chapter 18, relating to Organic Standards and Certification, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999 (Section 9-10.13). Section 9-10.13 and §2001.039 require state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes amendments to Title 4, §§18.1 - 18.17, new §18.18 and §18.25 and the repeal of §18.18. These may be found in the proposed rule section of this publication of the *Texas Register*. The assessment of Title 4, Chapter 18, by the department at this time indicates that the reason for adopting or readopting these rules as proposed continues to exist.

The department is accepting comment on the review of Chapter 18. Comments on the review may be submitted within 30 days following the publication of this notice in the *Texas Register* to Leslie McKinnon, Coordinator for Organic Certification, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas, 78711.

TRD-200002660
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: April 17, 2000

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Texas Ethics Commission

Title 1, Part 2

The Texas Ethics Commission inadvertently submitted the wrong notice of review in September 1999. The notice was published in the September 17, 1999, issue of the *Texas Register* (24 TexReg 7773) and indicated that the commission was reviewing Title 1, Texas Administrative Code, Chapters 6 (Organization and administration), 8 (Advisory Opinions), and 10 (Ethics Training Programs). The notice should have been for Title 1, Texas Administrative Code, Chapters 12 (Sworn Complaints) and 40 (Financial Disclosure for Public Officials).

To provide adequate notice of the review process for chapters 12 and 40 and to allow interested individuals to comment on the review, the commission is resubmitting its intention to review and will not submit a notice of readoption until 30 days after the publication of this notice of intention to review.

In accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997 (codified as §2001.039, Government Code), the Texas Ethics Commission proposes to review Title 1, Texas Administrative Code, Chapters 12 (Sworn Complaints) and 40 (Financial Disclosure for Public Officials) The reason for adopting the rules continues to exist.

Comments on the proposed review from any member of the public are solicited. A written comment should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, TX 78711-2070, or by facsimile (FAX) to (512) 463-5777. A person who wants to offer spoken comments to the commission concerning the proposed review may do so at any commission meeting during the agenda item "Communication to the Commission from the Public." Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

TRD-200002647
Tom Harrison
Executive Director
Texas Ethics Commission
Filed: April 14, 2000

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Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 37. Maternal and Infant Health Services, Subchapter A. Federal Laws and Regulations Governing Maternal and Child Health services Programs, §§37.1 - 37.3; Subchapter B. March of Dimes Rules on Health Education Grants, §§37.11

- 37.15; Subchapter C. Special Senses and Communication Disorders, §§37.21 - 37.46; Subchapter D. Newborn Screening Program, §§37.51 - 37.67, 37.69; Subchapter F. Hemophilia Assistance Program, §§37.111 - 37.125; Subchapter I. Memoranda of Understanding, §§37.191 - 37.193; Subchapter J. Neonatal Care, §37.201; Subchapter K. Epilepsy Program, §§37.211 - 37.224; Subchapter L. Maternal and Infant Health Improvement Program, §§37.231 - 37.244; Subchapter M. Texas Perinatal Care System, §§37.251 - 37.259; Subchapter N. State Maternal and Infant Health Care Program Advisory Committee, §§37.261 - 37.270; Subchapter O. Maternal and Child Health Advisory Committee, §37.281; Subchapter P. Surveillance and Control of Birth Defects, §§37.301 - 37.307; Subchapter Q. Reporting of Elevated Levels of Childhood Lead, §§37.331 - 37.336; and Subchapter R. School Health Advisory Committee, §37.350.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002768
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 38. Chronically Ill and Disabled Children's Services Program, §38.18.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002769
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 39. Primary Health Care Services Program, Subchapter A. Texas Primary Health Care Services Act Program Rules, §§39.1 - 39.22; and Subchapter D. Clearinghouse for Primary Care Providers Seeking Collaborative Practice, §§39.91 - 39.94.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002770
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 97. Communicable Diseases, Subchapter I. Immunization Requirements for Residents of Texas Nursing Homes, §§97.201 - 97.202.

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed

changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002771
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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The Texas Department of Health (department) will review and consider for readoption, revision or repeal Title 25, Texas Administrative Code, Part I, Chapter 98. HIV and STD Control, Subchapter A. HIV Services Grant Program, Division 1. General Provisions, §§98.1 - 98.6, 98.8; Division 2. AIDS/HIV Services Providers, §§98.21 - 98.25 - 98.27 - 98.28, 98.30 - 98.31; Division 3. AIDS/HIV Services; Clients, §§98.41 - 98.44; Subchapter B. HIV Education Grant Programs, Division 1. General Provisions, §§98.61 - 98.66, 98.68; Division 2. AIDS/HIV Education Providers, §§98.81 - 98.84, 98.86 - 98.87, 98.89 - 98.90; Subchapter C. Texas HIV Medication Program, Division 1. General Provisions, §§98.101 - 98.117; Division 2. Advisory Committee, §98.121; and Subchapter D. HIV H.O.P.E. (Health Options to Promote Employment) Project, §§98.131 - 98.146;

This review is in accordance with the requirements of the Texas Government Code, §2001.039, the General Appropriations Act, Article IX, §9-10.13, 76th Legislature, 1999.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department. The review of all rules must be completed by August 31, 2003.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200002772
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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Adopted Rule Reviews

Railroad Commission of Texas

Title 16, Part 1

The Railroad Commission of Texas ("Commission"), pursuant to Tex. Gov't Code, §2001.039, readopts §3.26, regarding separating devices, tanks, and surface commingling of oil. The notice of review was published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1732).

The Commission received no comments regarding the proposed rule review. After review, the Commission readopts this section, as amended.

The Commission has determined that the reasons for adopting this rule, with the adopted amendments, continue to exist.

Issued in Austin, Texas on April 11, 2000.

TRD-200002616
Mary Ross McDonald
Deputy General Counsel, Office of General Counsel
Railroad Commission of Texas
Filed: April 13, 2000

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State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the *Texas Register* (24 TexReg 10924), December 3, 1999, the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part VII of the Texas Administrative Code, in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, and Texas Government Code, §2001.039: Chapter 107, Terminology; Chapter 127, Miscellaneous; and Chapter 131, Guidelines for Confidentiality of Information.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these Chapters, without changes, pursuant to the requirements of §167.

No comments were received regarding the readoption of Chapters 107, 127, and 137.

This concludes the review of 7 TAC Chapters 107, 127, and 137.

TRD-200002609
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: April 12, 2000

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Texas Workers' Compensation Commission

Title 28, Part 2

In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the January 7, 2000 issue of the *Texas Register*, 25 TexReg 220, the Texas Workers' Compensation Commission has reviewed and considered for readoption the following rules in Title 28, Part II of the Texas Administrative Code:

Chapter 124 Compensation Procedures - Carriers Required Notices and Mode of Payment

§124.1 Notice of Injury

§124.2 Carrier Reporting and Notification Requirements

§124.5 Mode of Payment Made by Carriers

§124.6 Notice of Refused or Disputed Claim

§124.7 Initial Payment of Temporary Income Benefits

The Texas Workers' Compensation Commission (the Commission) has assessed whether the reason for adopting or readopting these rules continues to exist. One comment was received regarding the review of these rules.

Comment: Commenter suggested changes to §124.7 which the commenter believed would make this rule consistent with the statute and provide realistic payment deadlines.

Response: Commenter did not comment on the issue of re-adoption but made suggestions for amendments to the rule. Comments relating to amendments are beyond the scope of this review but will be forwarded to an appropriate rule development team for consideration in future actions by the Commission regarding this rule.

As a result of the review, the Commission has determined that the reason for adoption of the rules 124.1, 124.2, 124.5 & 124.7 continues to exist. Therefore, the Commission readopts these rules. If the Commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act. Although the reason for adopting Rule 124.6 continues to exist, the Commission recently adopted new rule 124.3 which contains the substance of Rule 124.6 and has repealed Rule 124.6. Therefore, rule 124.6 is not readopted.

TRD-200002760
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 19, 2000

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the February 18, 2000 issue of the *Texas Register*, 25 TexReg 1402, the Texas Workers' Compensation Commission has reviewed and considered for readoption the following rules in Title 28, Part II of the Texas Administrative Code:

Chapter 131 Calculation of Lifetime Income Benefits

§131.1 Initiation of Lifetime Income Benefits

§131.2 Calculation of Lifetime Income Benefits

§131.3 Carrier's Petition for Payment of Benefits By Subsequent Injury Fund

The Texas Workers' Compensation Commission (the Commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of the rules continues to exist. Therefore, the Commission readopts these rules. If the Commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200002761
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 19, 2000

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the February 18, 2000 issue of the *Texas Register*, 25 TexReg 1402, the Texas Workers' Compensation Commission has reviewed and considered for readoption the following rules in Title 28, Part II of the Texas Administrative Code:

Chapter 136 Medical Benefits - Vocational Rehabilitation

§136.1 Review of Employer Report of Injury

§136.2 Registry of Private Providers of Vocational Rehabilitation Services

The Texas Workers' Compensation Commission (the Commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of the rules continues to exist. Therefore, the Commission readopts these rules. If the Commission determines that any of these rules should be revised or repealed, the repeal or revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200002762
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 19, 2000

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In accordance with the General Appropriation Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature, and pursuant to the notice of intention to review published in the January 7, 2000 issue of the *Texas Register*, 25 TexReg 220, the Texas Workers' Compensation Commission has reviewed and considered for readoption the following rules in Title 28, Part II of the Texas Administrative Code:

Chapter 143 Dispute Resolution Review By The Appeals Panel

§143.1 Definitions

§143.2 Description of the Appeal Proceeding

§143.3 Requesting the Appeals Panel to Review the Decision of the Hearing Officer

§143.4 Responding to a Request for Review by the Appeals Panel

§143.5 Decision of the Appeals Panel

The Texas Workers' Compensation Commission (the Commission) has assessed whether the reason for adopting or readopting these rules continues to exist. No comments were received regarding the review of these rules.

As a result of the review, the Commission has determined that the reason for adoption of the rules continues to exist. Therefore, the Commission readopts these rules. If the Commission determines that any of these rules should be revised or repealed, the repeal or

revisions of the rules will be accomplished in accordance with the Administrative Procedure Act.

TRD-200002763
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: April 19, 2000

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TABLES & GRAPHICS

Graphic material from the emergency, proposed, and adopted sections is published separately in this tables and graphics section. Graphic material is arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic material is indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Graphic Material will not be reproduced in the Acrobat version of this issue of the *Texas Register* due to the large volume. To obtain a copy of the material please contact the Texas Register office at (512) 463-5561 or (800) 226-7199.

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Office of the Attorney General

Public Drinking Water System Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Health and Safety Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Code.

Case Title and Court: State of Texas v. Dexter Monroe d/b/a Dal High Water System, Case No. 99-06860, 53 RD Judicial District, Travis County, Texas.

Nature of Defendant's Operations: Defendant owns and operates a public drinking water system with approximately 43 service connections located north of US Highway 175, northwest of Athens, Henderson County, Texas. The State claims that Defendant violated Subchapter C of Chapter 341 of the Texas Health and Safety Code by failing to comply with various provisions of the Texas Natural Resource Conservation Commission's (TNRCC's) rules for public drinking water systems promulgated under that Subchapter.

Proposed Agreed Judgment: The proposed agreed final judgment permanently enjoins Defendant by requiring that Defendant do the following: adopt plumbing regulations that prohibit potential cross-connections or other undesirable plumbing practices; secure from adjacent landowners a sanitary easement covering all property within 150 feet of the well location; submit to TNRCC and obtain the TNRCC's approval of an engineering report prepared by a registered professional engineer which addresses the water system's capacity deficiencies; and implement the necessary improvements to meet the TNRCC's Minimum Water System Capacity Requirements. Additionally, Defendant shall pay $1,500 in attorney fees and all court costs.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement should be directed to Laura L. LaValle, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463- 2012, facsimile (512) 320-0052. Written comments must be received within 30 days of publication of this notice to be considered.

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

TRD-200002724
Elizabeth Robinson
Assistant Attorney General
Office of the Attorney General
Filed: April 17, 2000

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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. Requests for federal consistency review were received for the following projects(s) during the period of April 6, 2000, through April 13, 2000:

FEDERAL AGENCY ACTIONS:

APPLICANT: Prolific Energy Company, L.P.; Location: The project is located in State Tracts 142, 147, 193, and 233 in East Galveston Bay, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled Anahuac, Texas. CCC Project No.: 00-0109-F1; Description of Proposed Action: The applicant has requested an oil field development permit to install, operate, and maintain structures for the production of oil and gas in State Tracts 142, 147, 193, and 233. The applicant may install shell pads with approximately 1,002 cubic yards of clean shell to support the barge-mounted drilling platform at each potential location. Type of Application: U.S.A.C.E. permit application #21975 under §10 of the

Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

APPLICANT: James H. Glanville Company; Location: The project area is located in the Houston Ship Channel at its confluence with Green's Bayou, 1.5 miles south of Interstate 10 in Houston, Harris County, Texas. CCC Project No.: 00-0110-F1; Description of Proposed Action: The applicant proposes to modify permit number 18770(06) to add five public dredged material placement areas and one privately owned placement area to the original permit for use during previously authorized dredging activities. The applicant proposes to use the Peggy Lake Placement Area, the Lost Lake Placement Area, the Clinton Placement Area, the House Tract Placement Area, the East & West Jones Placement Area, and the Dynegy Galena Parks Placement Area. Type of Application: U.S.A.C.E. permit application #18770(07) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

APPLICANT: The Texas Parks and Wildlife Department Public Lands Region 4; Location: The project site is located in Santa Anna's Bayou in the San Jacinto Battleground State Park near Park Road 1836 in La Porte, Harris County, Texas. CCC Project No.: 00-0111-F1; Description of Proposed Action: The applicant proposes to amend Permit Number 20314 to include the construction of an additional containment levee. The proposed levee will involve the placement of 500 to 600 cubic yards of material into created wetlands for the purpose of impounding fresh drinking water for wildlife. Type of Application: U.S.A.C.E. permit application #20314(02) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

APPLICANT: Lyman Reed; Location: The proposed project is located between Moses Lake and Galveston Bay on Skyline Drive at the Tide Control Gate in Texas City, Galveston County, Texas. CCC Project No.: 00-0112-F1; Description of Proposed Action: The applicant proposes to amend Permit Number 13037(07) to update, clarify and modify the construction plans for his previously authorized marina. The proposed modifications include deleting Channel F and Borrow Pit #3; changing the waterway configuration of the marina; adding an option to relocate the 7-acre mitigation to the adjacent property (directly adjacent to wetlands that are protected from erosion); and adding Borrow Pit #2 as an expansion area for the marina. Type of Application: U.S.A.C.E. permit application #13037(08) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

APPLICANT: The Texas Parks and Wildlife Department; Location: The proposed project is located in Carancahua Cove, West Galveston Bay, near Jamaica Beach, Galveston County, Texas. CCC Project No.: 00-0119-F1; Description of Proposed Action: The applicant proposes to amend Permit Number 21456 to construct two new terrace fields. In addition, the entrance and circulation channels at Pirate's Cove would be dredged. Approximately 18,000 cubic yards of material would be removed from 4,500 linear feet of existing channel. The material would be deposited to create marsh islands in the shallow, unvegetated flats landward of the easternmost geotube. Type of Application: U.S.A.C.E. permit application #21456(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

APPLICANT: Kent & Linda Myers; Location: The project is located in Copano Bay and in Copano Ridge Subdivision, located between Salt Lake and Copano Bay, adjacent to Copano Ridge Road, approximately 3 miles northwest of Fulton, Aransas County, Texas. The proposed compensatory mitigation site is adjacent to Italian Bend of Port Bay, approximately 4.5 miles west of Rockport, Aransas County, Texas. CCC Project No.: 00-0120-F1; Description of Proposed Action: The applicant proposes to construct a breakwater to provide erosion protection for wetlands and uplands, construct a bulkhead within the area protected by the proposed breakwater, place fill behind the proposed bulkhead to create uplands suitable for single-family residential lots, and construct piers for the private, noncommercial use of future residents of the residential area. The proposed 800-foot-long bulkhead would be constructed prior to the placement of fill behind the bulkhead. Type of Application: U.S.A.C.E. permit application #21684 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403) and §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

APPLICANT: Department of Aviation, Houston Airport System; Location: The project is located in isolated wetlands within George Bush Intercontinental Airport, immediately south on FM 1960 and east of Aldine - Westfield Road, in Harris County, Texas. CCC Project No.: 00-0121-F1; Description of Proposed Action: The applicant proposes to construct improved aviation facilities within the project site. These would include the construction of a new 8,500-foot by 150-foot runway, expansion of an existing runway to 10,000 feet by 150 feet, construction of a consolidated rental car facility, relocation of segments of Garners Bayou, and excavation of stormwater detention ponds associated with these activities. This project would impact approximately 120 acres of wetlands, including approximately 73 acres of emergent wetlands, 6 acres of scrub/shrub wetlands, and 41 acres of forested wetlands. The applicant is proposing to perform mitigation for the project impacts at two locations. The first location is the Westside Airport property located between Katy and Brookshire. The second mitigation site would be located in the Bahr Woods Mitigation Area, between the West Fork of the San Jacinto River and Woodsons Gully. Type of Application: U.S.A.C.E. permit application #21984 under §404 of the Clean Water Act (33 U.S.C.A. §§125 - 1387).

FEDERAL AGENCY ACTIVITIES:

APPLICANT: U.S. Department of the Interior - Western Gulf of Mexico Lease Sale 177; CCC Project No.: 00-0117-F2; Description of Proposed Activity: The MMS has scheduled the proposed sale for August 2000. This is the fourth Western Planning Area (WPA) sale scheduled in the Outer Continental Shelf Oil & Gas Leasing Program (1997-2002). The proposed sale area includes about 28.4 million acres located 14 to 357 kilometers offshore in water depths ranging from 8 to 3,000 meters. Proposed Sale 177 would offer all unleased blocks in the WPA with the following exceptions: two whole and four partial blocks that lie within the Flower Garden Banks National Marine Sanctuary; blocks 793, 799, and 816 in the Mustang Island Area which have been identified by the Navy as needed for testing equipment and for training mine warfare personnel; and blocks beyond the U.S. Exclusive Economic Zone, in the area referred to as the northern portion of the Western Gap.

The MMS regulates all OCS operations under provisions of the OCSLA and regulations at 30 CFR Part 250, which are supplemented by lease stipulations and Notice-to-Lessees and Operators. These measures are designed to lessen potential adverse impacts to sensitive topographic (seafloor) features and to prevent damage or injury in military use areas offshore.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to

the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. Janet Fatheree, Council Secretary, Coastal Coordination Council, 1700 North Congress Avenue, Room 617, Austin, Texas 78701-1495, or janet.fatheree@glo.state.tx.us. Persons are encouraged to submit written comments as soon as possible within 30 days of publication of this notice. Comments should be sent to Ms. Fatheree at the above address or by fax at (512) 475-0680.

TRD-200002751
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: April 19, 2000

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Comptroller of Public Accounts

Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified, independent firms to provide master trust custodial services to the Comptroller. The Comptroller desires to obtain the services of a master trust custodian to assist the Comptroller in accounting for and safekeeping of certain securities that are under the care, custody and control of the Comptroller. The successful respondent will be expected to begin performance of the contract on or about June 1, 2000.

Contact: Parties interested in submitting a proposal should contact Pamela Ponder, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 463-4813, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, April 28, 2000, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, April 28, 2000, 2:00 p.m. (CZT).

Questions: All questions concerning the RFP must be in writing and submitted no later than Monday, May 8, 2000, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: Pamela Ponder, Deputy General Counsel for Contracts. On or before Thursday, May 11, 2000, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is **www.marketplace.state.tx.us**.

Closing Date: Proposals must be received in the Deputy General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Tuesday, May 23, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - April 28, 2000, 2:00 p.m. CZT;

Questions Due - May 8, 2000, 2:00 p.m. CZT;

Answers to Questions Posted - on or before May 11, 2000, or as soon thereafter as practical;

Proposals Due - May 23, 2000, 2:00 p.m. CZT;

Contract Execution - May 30, 2000, or as soon thereafter as practical;

Commencement of Project Activities - June 1, 2000.

TRD-200002781
David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 19, 2000

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Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). The successful respondent will be expected to begin performance of the contract on or about June 1, 2000.

Contact: Parties interested in submitting a proposal should contact Pamela Ponder, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 463-4813, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, April 28, 2000, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, April 28, 2000, 2:00 p.m. (CZT).

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Closing Date: Proposals must be received in the Deputy General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Tuesday, May 23, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

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Questions Due -May 8, 2000, 2:00 p.m. CZT;

Answers to Questions Posted - on or before May 11, 2000, or as soon thereafter as practical;

Proposals Due - May 23, 2000, 2:00 p.m. CZT;

Contract Execution - May 30, 2000, or as soon thereafter as practical;

Commencement of Project Activities - June 1, 2000.

TRD-200002782
David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 19, 2000

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Notice of Request for Proposals

Pursuant to §1201.027, Texas Government Code; Chapter 2254, Subchapter A, Texas Government Code; and Chapter 404, Subchapter H, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces its Request for Proposals (RFP) from qualified, independent law firms to serve as Bond Counsel to the Comptroller. The Comptroller desires to obtain the services of Bond Counsel in connection with a variety of issues related to the issuance, sale, and delivery of Tax and Revenue Anticipation Notes, including Commercial Paper Notes (Notes). The successful respondent will be expected to begin performance of the contract on or about June 1, 2000.

Contact: Parties interested in submitting a proposal should contact Pamela Ponder, Deputy General Counsel for Contracts, Comptroller of Public Accounts, 111 E. 17th St., Room G-24, Austin, Texas, 78744, telephone number: (512) 463-4813, to obtain a copy of the RFP. The Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP will be available for pick-up at the above-referenced address on Friday, April 28, 2000, between 2:00 p.m. and 5:00 p.m., Central Zone Time (CZT), and during normal business hours thereafter. The Comptroller will also make the RFP available electronically on the Texas Marketplace after Friday, April 28, 2000, 2:00 p.m. (CZT).

Questions: All questions concerning the RFP must be in writing and submitted no later than Monday, May 8, 2000, 2:00 p.m. Questions must be faxed to (512) 475-0973, Attn: Pamela Ponder, Deputy General Counsel for Contracts. On or before Thursday, May 11, 2000, the Comptroller expects to post answers to these written questions as a revision to the Texas Marketplace notice of the issuance of this RFP. The address of the Texas Marketplace is **www.marketplace.state.tx.us**.

Closing Date: Proposals must be received in the Deputy General Counsel's Office at the address specified above no later than 2:00 p.m. (CZT), on Tuesday, May 23, 2000. Proposals received after this time and date will not be considered.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. The Comptroller will make the final decision.

The Comptroller reserves the right to accept or reject any or all proposals submitted. The Comptroller is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of any RFP. The Comptroller shall pay no costs or any other amounts incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows:

Issuance of RFP - April 28, 2000, 2:00 p.m. CZT;

Questions Due -May 8, 2000, 2:00 p.m. CZT;

Answers to Questions Posted - on or before May 11, 2000, or as soon thereafter as practical;

Proposals Due - May 23, 2000, 2:00 p.m. CZT;

Contract Execution - May 30, 2000, or as soon thereafter as practical;

Commencement of Project Activities - June 1, 2000.

TRD-200002783
David R. Brown
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: April 19, 2000

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Texas Credit Union Department

Application(s) for a Merger or Consolidation

Notice is given that the following application has been filed with the Texas Credit Union Department and is under consideration:

An application was received from North East Texas Credit Union (Lone Star) seeking approval to merge with Marion County Federal Credit Union (Jefferson) with North East Texas Credit Union being the surviving credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200002777
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 19, 2000

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Application(s) to Expand Field of Membership

Notice is given that the following applications have been filed with the Texas Credit Union Department and are under consideration:

An application was received from Brownsville Teachers Credit Union, Brownsville, Texas to expand its field of membership. The proposal would permit persons who live, work, or worship in Cameron County,

Texas and businesses and other legal entities in Cameron County, Texas to be eligible for membership in the credit union.

An application was received from North East Texas Credit Union, Lone Star, Texas to expand its field of membership. The proposal would permit persons who reside, work or attend school in Titus County, Texas to be eligible for membership in the credit union.

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit the members of Board of Regents and Trustees at Amarillo College, Wayland Baptist University (Amarillo Campus), West Texas A&M University, and Clarendon College to be eligible for membership in the credit union.

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit the home schooling parents in Armstrong, Carson, Donley, Oldham, Potter, and Randall Counties, State of Texas to be eligible for membership in the credit union.

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit the certified day care employees in Potter and Randall Counties, State of Texas to be eligible for membership in the credit union.

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit the school board members of Amarillo ISD, Adrian ISD, Boys Ranch ISD, Canyon ISD, Highland Park ISD, River Road ISD, Vega ISD, Wildorado ISD, Hedley ISD, Clarendon ISD, White Deer ISD, Panhandle ISD, Groom ISD, and Claude ISD to be eligible for membership in the credit union.

An application was received from The Education Credit Union, Amarillo, Texas to expand its field of membership. The proposal would permit individuals holding a valid Texas Teaching Certification but not teaching in the counties of Armstrong, Carson, Donley, Oldham, Potter and Randall Counties, State of Texas to be eligible for membership in the credit union.

Comments or a request for a meeting by any interested party relating to an application must be submitted in writing within 30 days from the date of this publication. Credit unions that wish to comment on any application must also complete a Notice of Protest form. The form may be obtained by contacting the Department at (512) 837-9236. Any written comments must provide all information that the interested party wishes the Department to consider in evaluating the application. All information received will be weighed during consideration of the merits of an application. Comments or a request for a meeting should be addressed to the Texas Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699.

TRD-200002776
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 19, 2000

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Notice of Final Action Taken

In accordance with the provisions of 7 TAC §91.103, the Texas Credit Union Department provides notice of the final action taken on the following application(s):

Application(s) to Expand Field of Membership

Dallas Teachers Credit Union, Dallas, Texas - See *Texas Register* issue dated January 28, 2000

Telco Plus Credit Union, Longview, Texas (Denied) - See *Texas Register* issue dated January 28, 2000

TRD-200002775
Harold E. Feeney
Commissioner
Texas Credit Union Department
Filed: April 19, 2000

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East Texas Council of Governments

Public Notice - Request for Proposals for Youth Stand Alone Projects

The East Texas Workforce Development Area is requesting proposals for the operation and management of Youth Stand Alone Projects for a period beginning July 6, 2000 and extending through June 30, 2001. Provisions for these services will involve a cost reimbursement subcontract with the East Texas Council of Governments which serves as the Grant recipient and Administrative unit for the East Texas Workforce Development Board.

The purpose of this Request for Proposals is to solicit proposals for the management and operation of Stand Alone Projects funded through the Workforce Investment Act. Stand Alone Projects are independently operated, year-round programs that provide services to economically disadvantaged youth ages 14 through 21 that will help them achieve academic and employment success.

The total amount of funds available through this RFP will be approximately $350,000.00 and will be distributed as follows:

Only 25% or $87,500 is available to serve In-School youth. At least 75% or $262,500 must be used to serve Out-of-School youth.

The amount of funds available is subject to change. Projects may serve out-of-school youth exclusively. However, of the total $350,000.00 available for stand-alone projects, not more then 25% or $87,500 total may be spent on in-school youth.

Persons or organizations wanting to receive a Request for Proposal should request by letter or by fax. Request should be addressed to Gary Allen, Section Chief - Planning and Board Support, Workforce Development Programs, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662 or faxed to 903983-1440.

RFP's will not be released prior to April 12, 2000. It is anticipated that the deadline for receipt of proposals shall be May 8, 2000.

Questions concerning the Request for Proposals process should be addressed to Wendell Holcombe, East Texas Council of Governments at (903) 984-8641.

TRD-200002648
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: April 14, 2000

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Request for Qualifications for Individuals Interested in Serving as Independent Reviewers

This is to request individuals to serve as independent reviewers for Workforce Investment Act Stand Alone Youth Project proposals. The

review of proposals is scheduled on May 9-10, 2000 and May 11, 2000 if necessary. The ratings of the reviewers will be considered by the Youth Committee of the East Texas Workforce Development Board as they develop a recommendation for subcontract award. Reviewers will be paid $450 per day plus expenses. Individuals interested in serving as independent reviewers should submit a resume along with a cover letter indicating their availability on the proposed dates. Individuals who have submitted a resume within the past 24 months need not send a new resume unless there is a need to update the information, but written notification of availability is required in order to be considered.

Submissions must be in writing and due at 5:00 p.m. Central Daylight Time on April 24, 2000. Facsimile and e-mail submissions are acceptable. All correspondence should be sent to the attention of:

Gary Allen, Section Chief-Planning and Board Support, East Texas Council of Governments, 3800 Stone Road, Kilgore, Texas 75662, Phone: (903) 984-8641, Fax - (903) 983-1440, E-mail; gary.allen@twc.state.tx.us

Anyone having questions regarding this process should contact Wendell Holcombe, Director of Workforce Programs, or Gary Allen at the address listed above.

TRD-200002646
Glynn Knight
Executive Director
East Texas Council of Governments
Filed: April 14, 2000

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Texas Department of Health

Notice of Request for Proposals for the Texas Health Steps Program

INTRODUCTION

The Texas Department of Health (department) requests proposals for the Texas Health Steps (THSteps) program for the project period beginning at date of award through August 31, 2001, with two optional renewal periods corresponding to state fiscal years 2002 and 2003. The department is seeking to select providers of services related to the recruitment, retention, and training of THSteps medical and dental providers. Proposals will be reviewed and awarded on a competitive basis.

PURPOSE

The THSteps program (formerly known as the Early and Periodic Screening, Diagnosis and Treatment - EPSDT) is a federally mandated preventive health care program administered by the department. It is the intent of this Request for Proposals (RFP) to enhance ThSteps provider training and recruitment outcomes by providing additional training opportunities for both existing and potential ThSteps providers.

ELIGIBLE APPLICANTS

Eligible applicants include community-based groups, health departments, public and private agencies, proprietary entities, for-profit, not-for-profit organizations, boards, and other health and education related organizations.

AVAILABLE FUNDS

The specific dollar amount to be awarded will depend upon the merit and scope of the proposed project(s). Continued funding will be based upon the availability of funds and the documented progress of the project.

DEADLINE

The original and seven copies of the application must be received by Ben Delamater, Purchaser, Texas Department of Health, Materials Acquisition and Management Division, 1100 West 49th Street, Austin, Texas 78756, on or before 5:00 p.m., Central Daylight Saving Time, on July 7, 2000. No facsimiles will be accepted.

REVIEW AND AWARD CRITERIA

Each application will be screened for eligibility and responsiveness. Non-eligible and non- responsive applications will not be considered for further evaluation. Applications that arrive after the deadline for submission will not be reviewed. Eligible, complete applications will be reviewed by a panel of reviewers and scored according to the quality of the application.

FOR INFORMATION

For a copy of the RFP, and other information, contact Ben Delamater, Texas Department of Health, Materials Acquisition and Management Division, 1100 West 49th Street, Austin, Texas, Telephone (512) 458-7744, Extension 6950; Fax Number (512) 458-7244; or E-Mail benjamin.delamater@tdh.state.tx.us.

No copies of the RFP will be released prior to May 3, 2000.

TRD-200002773
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: April 19, 2000

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Texas Health and Human Services Commission

Notice of Adopted Medicaid Provider Payment Rates

As single state agency for the state Medicaid program, the Health and Human Services Commission adopts new enhanced per diem payment rates for nursing facilities participating in the Enhanced Direct Care Staff option to be implemented by the Texas Department of Human Services. Providers choosing to participate will be paid one of the payment rates in addition to the basic payment rates effective January 1, 2000. Payment rates that were published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3330) are effective May 1, 2000, as follows:

Minutes Associated with Rate	Rate Per Diem
1 LVN Minute = 2 Aide Minutes = 0.67 RN Minutes	$0.28
2 LVN Minutes = 4 Aide Minutes = 1.33 RN Minutes	$0.56
3 LVN Minutes = 6 Aide Minutes = 2.00 RN Minutes	$0.84
4 LVN Minutes = 8 Aide Minutes = 2.67 RN Minutes	$1.12
5 LVN Minutes = 10 Aide Minutes = 3.33 RN Minutes	$1.40
6 LVN Minutes = 12 Aide Minutes = 4.00 RN Minutes	$1.68
7 LVN Minutes = 14 Aide Minutes = 4.67 RN Minutes	$1.96
8 LVN Minutes = 16 Aide Minutes = 5.33 RN Minutes	$2.24
9 LVN Minutes = 18 Aide Minutes = 6.00 RN Minutes	$2.52
10 LVN Minutes = 20 Aide Minutes = 6.67 RN Minutes	$2.80
11 LVN Minutes = 22 Aide Minutes = 7.33 RN Minutes	$3.08
12 LVN Minutes = 24 Aide Minutes = 8.00 RN Minutes	$3.36
13 LVN Minutes = 26 Aide Minutes = 8.67 RN Minutes	$3.64
14 LVN Minutes = 28 Aide Minutes = 9.33 RN Minutes	$3.92
15 LVN Minutes = 30 Aide Minutes = 10.00 RN Minutes	$4.20

The adopted rates were determined in accordance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, subchapter C (relating to Enhanced Direct Care Staff Rate), §355.308.

TRD-200002759

Marina Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: April 19, 2000

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Release of Publication: Long-Term Care Plan for Persons with Mental Retardation and Related Conditions

In accordance with its responsibilities as defined under the Texas Health and Safety Code, §533.062, the Texas Health and Human Services Commission publishes this "Long-Term Care Plan for Persons with Mental Retardation and Related Conditions."

The report is available on the HHSC website at **http://www.hhsc.state.tx.us** beginning April 19, 2000. Interested parties may also obtain copies of the report at the offices of HHSC, 4900 North Lamar Boulevard, Fourth Floor, Austin, Texas, 78751.

TRD-200002778
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Filed: April 19, 2000

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Texas Department of Housing and Community Affairs

Housing Trust Fund Capacity Building Program Notice of Request for Proposals

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund, pursuant to the newly adopted rules published in the April 14, 2000 issue of the *Texas Register* (25 TexReg 3239), is accepting proposals to provide training to nonprofit and community housing development organizations in the state of Texas. The purpose of the training will be to assist these organizations in developing their capacity to provide safe, decent and sanitary housing for low, very low, and extremely low income individuals and families, and persons with special needs. Proposals will be considered for providing training on a statewide or regional basis.

Successful candidates will provide training services under contract with TDHCA. Training may be scheduled through June 30, 2001. Training topics may include, but are not limited to, the following:

Architectural Barrier Removal/Universal Design;

CHDO Training;

Comprehensive Capacity Building (including Planning, Resource Development, Internal Operations and Governance, Program Delivery, and Networking);

Construction Management;

Energy Efficiency and Alternative Building Methods;

Grant Application Writing;

Property Management;

Real Estate/Project Development.

Proposals must be received at TDHCA by 5:00 p.m. on June 12, 2000.

Faxed proposals will not be accepted.

The Housing Trust Fund plans to select a diverse group of proposals that will serve nonprofit housing development organizations throughout the state. Proposals will be selected based on criteria outlined in the proposal package.

Awards will be made as grants. TDHCA's board of directors reserves the right to change the award amount, or to award less than the requested amount.

All interested parties with a workable plan are encouraged to participate in the program. For more information or to request a proposal package, please contact the Housing Trust Fund office at (512) 475-1458, or e-mail bmcmurra@tdhca.state.tx.us. Please direct your proposal to :

Texas Department of Housing and Community Affairs

Housing Trust Fund

Attn.: Bradford D. McMurray

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200002747
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 18, 2000

♦ ♦ ♦

Housing Trust Fund Predevelopment Loan Fund Program Notice of Request for Proposals

The Texas Department of Housing and Community Affairs' (TDHCA) Housing Trust Fund, pursuant to the newly adopted rules published in the April 14, 2000 issue of the *Texas Register* (25 TexReg 3239), is accepting proposals to administer seven hundred thirty two thousand dollars ($732,000) of predevelopment loan funds to nonprofit and community housing development organizations in the state of Texas, whose purpose is to provide safe, decent and sanitary housing for low, very low, and extremely low income individuals and families, and persons with special needs.

The successful candidate must demonstrate that they will be able to identify and provide matching funds equal to the amount of funds furnished by the Housing Trust Fund ($732,000). The Housing Trust Fund will select a single nonprofit organization to match and administer these funds to local nonprofit and community housing development organizations throughout the state.

Proposals will be selected based on criteria outlined in the proposal package. The award will be made as a grant, and administered under contract with TDHCA. An administrative fee of up to $50,000 is available to the successful candidate.

Proposals must be received at TDHCA by 5:00 p.m. on June 12, 2000.

Faxed proposals will not be accepted.

All interested parties with a workable plan are encouraged to participate in the program. For more information or to request a proposal package, please contact the Housing Trust Fund office at (512) 475-1458, or e-mail bmcmurra@tdhca.state.tx.us. Please direct your proposal to:

Texas Department of Housing and Community Affairs

Housing Trust Fund

Attn.: Bradford D. McMurray

P.O. Box 13941

Austin, Texas 78711-3941

Physical Address:

507 Sabine, Suite 400

Austin, Texas 78701

TRD-200002748
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 18, 2000

♦ ♦ ♦

Notice of Administrative Hearing (MHD1999001340RD and MHD2000000799RD)

Manufactured Housing Division

Notice of Administrative Hearing to be held **Tuesday, May 9, 2000, 1:00 p.m.**, State Office of Administrative Hearing, Stephen F. Austin Building, 1700 North Congress, 11th Floor, Suite 1100, Austin, Texas.

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the Texas Department of Housing and Community Affairs vs. Gold Starr Corporation to hear alleged violations of the Act, §6(j) and §20(a), the Rules §80.180(b) and Chapter 347.304(b) and 347.305 of the Texas Finance Code regarding not delivering the formaldehyde health notice to a consumer prior to the execution of any mutually binding sales agreement; failing to have a consumer sign a formaldehyde notice and give a copy of the signed notice to the consumer; not giving a consumer the conspicuous notice of the requirements of the Texas Finance Code concerning retention of deposits, failing to have the consumer sign the notice, and failing to give the consumer a copy of the notice at the time the deposit was made; and exceeding the maximum deposit to hold a manufactured home in inventory. SOAH 332-001069. Department MHD1999001340RD and MHD2000000799RD.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-200002785
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 19, 2000

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Office of Colonia Initiatives - Notice of Determination of Certain Counties/Executory Contract for Deed

In accordance with Subchapter E, Chapter 5, Texas Property Code, as added by Chapter 994, Acts of the 74th Legislature, the Texas Department of Housing and Community Affairs has determined that the requirements governing residential contracts for deed in Subchapter E will apply to the following counties in Texas:

1. Andrews
2. Brooks
3. Cameron
4. Coleman
5. Culberson
6. Dimmit
7. Duval
8. El Paso
9. Frio
10. Hidalgo
11. Jim Hogg
12. Jim Wells
13. Kinney
14. Kleberg
15. La Salle
16. Maverick
17. Mitchell
18. Nolan
19. Pecos
20. Presidio
21. Reagan
22. Reeves
23. San Patricio
24. Starr
25. Uvalde
26. Val Verde
27. Ward
28. Webb
29. Willacy
30. Winkler
31. Zapata
32. Zavala

Each county listed above is within 200 miles of an international border and has a per capita income that averaged 25 percent below the state average for the years 1995, 1996, and 1997 and an unemployment rate that averaged 25 percent above the state average for the years 1997, 1998, and 1999.

The Texas Department of Housing and Community Affairs has also determined that the requirements contained in Subchapter E will apply to the counties listed above beginning June 1, 2000 , please contact Ann A. Garcia at the Office of Colonia Initiatives at 1-800-462-4251 or agarcia@tdhca.state.tx.us. for additional information.

TRD-200002732
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: April 18, 2000

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Houston-Galveston Area Council

Request for Proposal

Analysis of Potential Control Measures to Obtain NOx Reductions and Prepare the Mobile Source-Trading Program

AGENCY: The Houston-Galveston Area Council (H-GAC)

CONTACT: Lily Elizabeth Wells, AICP

Chief Air Quality Planner

The Houston-Galveston Area Council (H-GAC)

Transportation Department

P. O. Box 22777 - 3555 Timmons Lane

Houston, Texas 77227-2777

Phone: 713-993-4537

Description: The Houston-Galveston Area Council seeks Request For Proposal from firms with expertise in evaluating potential control measures reducing mobile emissions of Nitrogen Oxides (NOx). Qualifying firms must demonstrate their ability to quantify potential emissions benefits and costs of potential mobile source control measures contained in revisions to the Texas State Implementation Plan (SIP) for the Houston-Galveston nonattainment Area. The Study Area for this project is defined as the Houston-Galveston Nonattainment Area, which includes Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller Counties.

A pre-proposal meeting is scheduled for **Tuesday, May 2, 2000 at 2:30 p.m.** in H-GAC's Conference Room "A" (Second Floor of 3555 Timmons Lane, Houston, Texas 77027). Questions from consultants concerning any aspect of the RFP will be addressed during this meeting. The deadline for the submission of this proposal is **Friday, May 19, 2000,** promptly at **4:00 p.m.** Ten (10) typewritten, bound/ stapled and signed copies are required.

TRD-200002731
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: April 18, 2000

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Texas Department of Human Services

Request for Proposal (RFP) - CLASS Case Management Services in Dallas County Catchment Area

The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the Department, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Purpose: This announcement should appear in the *Texas Register* on April 28, 2000.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

Geographic Area: The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service area/counties: Possibility of up to 141 individuals in the Dallas area (Dallas, Denton, Kaufman, Collin, Rockwall, Ellis counties).

Closing Date and Time: Proposals must be received by the Department by 5:00 p.m. on Wednesday, June 7, 2000.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Systems Support Specialist, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, TX 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas 78714-9030. You may call Jessie Hood at (512) 438-3516 or fax a request to (512) 438-5135. The RFP packet will be available on Monday, May 1, 2000.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS by 5:00 p.m. on Friday, May 19, 2000.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-200002774
Paul Leche
Liaison
Texas Department of Human Services
Filed: April 19, 2000

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Department of Information Resources

Invitation to Negotiate

Notice of Invitation to Negotiate (ITN). The Department of Information Resources (DIR) is requesting proposals from Consultants for a Statewide Information Technology Security Assessment for all Texas state agencies and selected institutions of higher education (Agencies). The closing date for the Invitation to Negotiate is May 1, 2000.

Objective and Scope of Work: The goal of this initiative is to assess the current status of state security preparedness and review the statewide security structure, with an emphasis of online systems connected to the Internet, and the feasibility of consolidating operations for small agencies. Based on the assessment, solutions will be recommended where needed, and best practices will be determined. A final report will make agencies and leadership aware of the status of security as it relates to information technology and the impact it has on the E-Government initiatives.

The role of the consultant will be to perform all the functions of the information technology security assessment listed in accordance with the terms and conditions of a contract with DIR. The consultant shall be required to coordinate the work directly with DIR and the agency participants. The consultant shall report project status to the project team at DIR and to a steering committee made up of agency participant members. Actions will be taken as security weaknesses are identified to immediately convey them to the affected agency for appropriate resolution.

Statement of Experience. The consultant must include evidence of the qualifications and experience in information technology security

methods and skills and describe the consultant's knowledge of the project requirements.

Awards Procedure. All proposals must meet the requirements set forth in the ITN, available from DIR in April 2000. A vendor selections committee will be made up of DIR staff who shall review the offers and determine which consultants demonstrate competence, knowledge, and has the best qualifications. At any time during this process, proposers may be asked to clarify their proposal. In addition, the consultants selected will be requested to further demonstrate competence, knowledge and qualifications with an oral presentation. The DIR reserves the right to accept or reject any or all proposals submitted. Issuance of this ITN creates no obligation to award a contract or to pay proposal preparation costs.

TO OBTAIN THE ITN: CONTACT: Linda Mullins at (512) 463-8891; Department of Information Resources; P.O. Box 13564; Austin, Texas 78711-3564, or send an e-mail request for the ITN to linda.mullins@dir.state.tx.us. The ITN is also available at DIR's website: http://www.dir.state.tx.us/.

TRD-200002620
C.J. Brandt, Jr.
General Counsel
Department of Information Resources
Filed: April 13, 2000

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Texas Department of Insurance

Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of VALUE BEHAVIORAL HEALTH OF TEXAS, INC. to VALUEOPTIONS OF TEXAS, INC., a domestic health maintenance organization. The home office is in Dallas, Texas.

Application to change the name of THE TOA-RE INSURANCE COMPANY OF AMERICA to THE TOA REINSURANCE COMPANY OF AMERICA, a foreign fire and casualty company. The home office is in Wilmington, Delaware.

Application to change the name of ROYAL MACCABEES LIFE INSURANCE COMPANY to REASSURE AMERICA LIFE INSURANCE COMPANY, a foreign life company. The home office is in Jacksonville, Florida.

Application for admission to the State of Texas by MENDOTA INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Mendota Heights, Minnesota.

Application for admission to the State of Texas by AMERISURE PARTNERS INSURANCE COMPANY, a foreign fire and casualty company. The home office is in Farmington Hills, Michigan.

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-200002622
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 13, 2000

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Insurer Services

The following applications have been filed with the Texas Department of Insurance and are under consideration:

Application to change the name of COMMERCIAL UNION LIFE INSURANCE COMPANY OF AMERICA to CGU LIFE INSURANCE COMPANY OF AMERICA, foreign life company. The home office is in Wilmington, Delaware.

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-200002779
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 19, 2000

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Notice of Public Hearing

Under Docket No. 2447 the Commissioner of Insurance will hold a public hearing on May 24, 2000, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe St., Austin, Texas. This hearing is concerning proposed amendments to 28 TAC §§5.9403 - 5.9406 and §§5.9408 - 5.9411, relating to the plan of operation of the Residential Property Insurance Market Assistance Program (MAP).

The proposed amendments and the statutory authority for the proposal were published in the April 14, 2000, issue of the *Texas Register* (25 TexReg 3168).

TRD-200002758
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 19, 2000

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, Texas Government Code, the Texas Department of Insurance (TDI) announces its Request for Proposals (RFP) from qualified Respondents for consultant and actuarial services for a study of health insurance mandated benefits. The successful respondent, if any, shall review, analyze, and evaluate the costs and benefits associated with thirteen (13) mandated health insurance benefits as provided in group health benefit plans. The thirteen mandated health insurance benefits that must be addressed in the study are as follows: chemical dependency; complications of pregnancy; oral contraceptives; newborns with congenital defects; HIV/AIDS/HIV-related illnesses; mammography screening; prostate-specific antigen screening; serious mental illness; minimum maternity length-of-stay; minimum mastectomy length-of-stay; reconstructive surgery following mastectomy; handicapped dependents regardless of age; and childhood immunizations. The successful respondent will be expected to begin performance of the contract on or about May 19, 2000.

Contact: Parties interested in submitting a proposal should contact Regina Durden, Director of Purchasing, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714, (512) 475-1782, or by e-mail at **Regina.Durden@tdi.state.tx.us**. to obtain a complete copy of the RFP. The RFP is available electronically on TDI's website at **www.tdi.state.tx.us** and on Texas Marketplace at **www.texasone.org**.

Evaluation Criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP.

Closing Date: Proposals must be received in the Purchasing Division no later than 3:00 p.m.(cst) on May 5, 2000. Proposals received after this time and date will not be considered.

TDI reserves the right to accept or reject any or all proposals submitted. TDI is under no legal or other obligation to execute a contract on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TDI to pay for any costs incurred prior to the execution of a contract.

TRD-200002780
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 19, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Orthopedic Physicians of Texas Association, a domestic third party administrator. The home office is Houston, Texas.

Application for incorporation in Texas of Vision Choice, P.A., a domestic third party administrator. The home office is Houston, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200002659
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 17, 2000

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Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for incorporation in Texas of Discount Services, Inc., a domestic third party administrator. The home office is Dallas, Texas.

Application for admission to Texas of Employee Benefit Plan Administration, Inc., a foreign third party administrator. The home office is Hampton, New Hampshire.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200002784
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: April 19, 2000

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Texas Department of Mental Health and Mental Retardation

Notice of Public Hearing

Legislation requires that the Texas Department of Mental Health and Mental Retardation (TDMHMR) develop a report on state-operated campus-based mental retardation facilities (state schools) and state-operated campus-based mental health facilities (state hospitals) for submission with the agency's strategic plan.

This report is required to:

(a) project future bed requirements for state schools and state hospitals;

(b) document the methodology used to develop projections of future bed requirements;

(c) project maintenance costs for institutional facilities;

(d) recommend strategies to maximize the use of institutional facilities; and

(e) specify how each state school and hospital will:

(1) serve and support the communities and consumers in its service area; and

(2) fulfill statewide needs for specialized services.

As the report is developed, TDMHMR is required to consider:

(a) the medical needs of the most medically fragile of its consumers,

(b) the provision of services to consumers with severe and profound mental retardation and to persons with mental retardation who are medically fragile or have behavioral problems,

(c) the program and service preference information collected, and

(d) input solicited from consumers of services of mental retardation and mental health facilities.

Legislation also requires that TDMHMR conduct two public hearings to receive comments from interested parties, one to be held at the beginning of the report development process and the second to be held at the end of the process. TDMHMR held the first of the required public hearings on November 23, 1999.

In accordance with these requirements, TDMHMR has scheduled the second public hearing to hear comments from interested parties regarding the draft report. The public hearing will be held on May 17, 2000, in the Texas Department of Mental Health and Mental Retardation Central Office Auditorium, 909 West 45th St., Austin, Texas between 8:30 a.m. to 4:00 p.m. The session in the morning is scheduled between 8:30 a.m. - 11:30 a.m. to receive comments on the draft report regarding mental retardation facilities and the afternoon session is scheduled between 1:00 p.m. - 4:00 p.m. to receive comments on the draft report regarding mental health facilities.

Each speaker will have a maximum of 5 minutes for presentation.

A copy of the draft report may be obtained, beginning May 3, 2000, at the TDMHMR web site at: http://www.mhmr.state.tx.us/centraloffice/planningresearchevaluation/reports.

Copies of the draft report may also be obtained, beginning May 3, 2000, by contacting: Vijay Ganju, Ph.D., Director, Planning, Research and Evaluation, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668.

Comments regarding the draft report should be directed to Dr. Ganju. Comments must be received by 5:00p.m. on Friday, May 19, 2000.

TRD-200002746
Charles Cooper
Chairman, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Filed: April 18, 2000

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Texas Natural Resource Conservation Commission

Correction of Error

The Texas Natural Resource Conservation Commission adopted amendments to 30 TAC §116.10. The rule appeared in the April 7, 2000, *Texas Register* (25 TAC 2957).

Due to an error by TNRCC, at the beginning of subparagraph §116.10(2)(C) on page 2962 the new underlined language should have read "**Qualified grandfathered facility.**" The word "facility" was omitted in error.

TRD-200002803
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission

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Enforcement Orders

An agreed order was entered regarding R. J. SMELLEY COMPANY INC, Docket Number 1997-0956-AGR-E; Permit Number 02422; Enforcement ID Number 11681 on April 7, 2000, assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ali Abazari, Staff Attorney at (512) 239-5915 or Karen Berryman, Enforcement Coordinator at (512) 239-2172, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An order was entered regarding BASSE TRUCK LINE, INC., Docket Number 1998-1232- AIR-E; SOAH Docket Number 582-99-0802 on April 14, 2000, assessing $2,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting William Puplampu, Staff Attorney at (512) 239-0677 or Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding TEXAS INDUSTRIAL SCRAP IRON AND METAL, INC., Docket Number 1998-1303-AIR-E; SOAH Docket Number 582-99-2446 on April 7, 2000, assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robin Houston, Staff Attorney at (512) 239-0682 or Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GARY MCCUVVINS DBA MELODY RANCH SALES, Docket Number 1999-1269-AIR-E; Air Account Number TA-3752-N on April 7, 2000, assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892 or Jorge Ibarra, Enforcement Coordinator at (817) 469-6750, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SAM ABOUL-JIBIN DBA MONDIAL SALES & SERVICES CENTER, Docket Number 1999-0964-AIR-E; Air Account Number TA-3907-I on April 7, 2000, assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding JOHNNY SMITH DBA JOHNNY SMITH USED CARS, Docket Number 1999-0962-AIR-E; Air Account NumberTA-3236-N on April 7, 2000, assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MICKEY GARNER DBA MAJIC ENTERPRIZES, Docket Number 1999-0961-AIR-E; Air Account Number TA-3822-R on April 7, 2000, assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ULTRAMAR DIAMOND SHAMROCK, L.P., Docket Number 1999-0401-AIR-E; Air Account Number LK-0009-T on April 7, 2000, assessing $10,925 in administrative penalties with $4,370 deferred.

Information concerning any aspect of this order may be obtained by contacting Gary McDonald, Enforcement Coordinator at (512) 825-3100 or Lawrence King, Enforcement Coordinator at (512) 239-1405, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding BFI WASTE SYSTEMS OF NORTH AMERICA, INC., Docket Number 1999-1251-AIR-E; Air Account Number JI-0046-S on April 7, 2000, assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Kara Dudash, Enforcement Coordinator at (915) 698-9674 or Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GREENBRIER OPERATING COMPANY, Docket Number 1999-0763-AIR-E; Air Account Number HN-0306-J on April 7, 2000, assessing $4,500 in administrative penalties with $900 deferred.

Information concerning any aspect of this order may be obtained by contacting Fara O'Neal, Enforcement Coordinator at (956) 430-6041 or Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EL PASO COUNTY WATER IMPROVEMENT DISTRICT #1, Docket Number 1999-1464-AIR-E;

Air Account Number EE-2055-E on April 7, 2000, assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MOONEY AIRCRAFT CORPORATION, Docket Number 1999-1187-AIR-E; Air Account Number KF-0007-V on April 7, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210) 403-4061 or Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PANTEX MANUFACTURING, INC., Docket Number 1999-1268-AIR-E; Air Account Number KB-0058-C on April 7, 2000, assessing $12,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding COOPER'S AUTOMOTIVE, INC., Docket Number 1999-0845-PST-E; PST Facility ID Number 0008290 on April 7, 2000, assessing $1,875 in administrative penalties with $375 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 899-8704 or Bill Davis, Enforcement Coordinator at (512) 239-6793, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRANKLIN BARRON DBA FORMERLY LAKEWAY VILLAGE & GROCERY, Docket Number 1999-0993-PST-E; PST Facility ID Number 28128 on April 7, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Kara Dudash, Enforcement Coordinator at (915) 698-9674 or Michael De La Cruz, Enforcement Coordinator at (512) 239-0259, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MR. MOHAMMAD ARIF DBA SUPER STAR #3, Docket Number 1999-1066-PST-E; PST Facility ID Number 0027472 on April 7, 2000, assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Laura Clark, Enforcement Coordinator at (409) 898-3838 or David Van Soest, Enforcement Coordinator at (512) 239-0468, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding KHALIL'S ZOOM-IN MARKET INC., Docket Number 1999-1220-PST-E; PST Facility ID Number 0034297 on April 7, 2000, assessing $1,250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Lopez, Enforcement Coordinator at (512) 239-1896, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HOTEL PASO DEL NORTE, INC., Docket Number 1999-0843-PST-E; PST Facility ID Number 0056571 on April 7, 2000, assessing $7,000 in administrative penalties with $1,400 deferred.

Information concerning any aspect of this order may be obtained by contacting Kristi Jones, Enforcement Coordinator at (512) 239-1258, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MAXEY ENERGY COMPANY, Docket Number 1998-0834-PST-E; PST Facility ID Number 0023529 on April 7, 2000, assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210) 403-4061or Kristi Jones, Enforcement Coordinator at (512) 239-1258, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RAKESH KORPAL DBA PANTRY PLACE, Docket Number 1999-0830-PST-E; PST Facility ID Number 0008060 on April 7, 2000, assessing $3,150 in administrative penalties with $630 deferred.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 898-3838 or Duane Tisdale, Enforcement Coordinator at (512) 239-0004, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ALL AMERICAN CHEVROLET, INC., Docket Number 1999-1355-IHW-E; Industrial Hazardous Waste 67534 on April 7, 2000, assessing $2,500 in administrative penalties with $500 deferred.

Information concerning any aspect of this order may be obtained by contacting Mark Newman, Enforcement Coordinator at (915) 655-9479 or Keith Witter, Enforcement Coordinator at (512) 239-5118, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding RHODIA, INCORPORATED, Docket Number 1999-0894-IHW-E; ISW Registration Number 31019 on April 7, 2000, assessing $6,840 in administrative penalties with $1,368 deferred.

Information concerning any aspect of this order may be obtained by contacting Billie Zaporteza, Enforcement Coordinator at (713) 767-3634 or Rebecca Clausewitz, Enforcement Coordinator at (512) 239-2359, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DDS AGGREGATES, INC., Docket Number 1999- 0928-MWD-E; No Water Quality Permit Number on April 7, 2000, assessing $3,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672 or Julie McMasters, Enforcement Coordinator at (512) 239-5839, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DOOR TO RECOVERY, INC., Docket Number 1999-0910-MWD-E; WQ Permit Number

13941-001 on April 7, 2000, assessing $5,000 in administrative penalties with $1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Michelle Harris, Enforcement Coordinator at (512) 239-0492, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CARL RANGEL , Docket Number 1999-1033-OSI- E; No Installer Certification Number on April 7, 2000, assessing $500 in administrative penalties with $100 deferred.

Information concerning any aspect of this order may be obtained by contacting Kent Heath, Enforcement Coordinator at (512) 239-4575, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MARCO D. FERNANDEZ , Docket Number 1999- 1193-OSS-E; OSSF Number OS2409 on April 7, 2000, assessing $275 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Robbie Allen, Enforcement Coordinator at (512) 239-3142, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EDDIE MCFARLAND, Docket Number 1999-1258- PWS-E; Waterworks Operator Certificate Number 438-41-6605 on April 7, 2000.

Information concerning any aspect of this order may be obtained by contacting Terry Thompson, Enforcement Coordinator at (512) 239-6095, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G-M WATER SUPPLY CORPORATION, Docket Number 1999-1099-PWS-E; PWS Number 2020067 on April 7, 2000, assessing $10,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Susan Kelly, Enforcement Coordinator at (409) 898-3838 or Kimberly McGuire, Enforcement Coordinator at (512) 239-4761, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200002734
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 18, 2000

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Invitation to Comment on the 2000 Clean Water Act §303(d) List

The Texas Natural Resource Conservation Commission (TNRCC) requests comments on the proposal to add 11 water bodies to the 2000 Clean Water Act (CWA) §303(d) List of impaired and threatened water bodies. The §303(d) list is developed pursuant to the requirements of the federal CWA, §303(d) and 40 CFR §130.7. The list is used to select water bodies for which total maximum daily load (TMDL) analyses and management actions will be initiated.

Upon review and analysis of data, information, and comments provided to the TNRCC during the first public comment period (January 15 - February 28, 2000) the following 11 water bodies and parameters have been added to the draft list.

Local residents, interest groups, or other organizations familiar with the 11 water bodies may have knowledge of specific problems, programs, or conditions unknown to TNRCC staff that should be considered to finalize the list. Useful information may include additional threats to water quality and water resources or additional data that depicts the quality of the 11 water bodies. Additional information may result in: (1) removal of one of the 11 water bodies from the draft §303(d) list, or (2) a change in the priority ranking assigned to one of the 11 water bodies for TMDL development.

After the 30-day public comment period, the TNRCC will evaluate any additional data or information received on the 11 water bodies, and appropriate changes will be reflected in the final §303(d) list. The final §303(d) list will be sent to the United States Environmental Protection Agency (EPA) for approval on or before June 30, 2000.

Segment #	Segment Name	Parameter	Reason for Addition to List
0218	Wichita/North Fork Wichita River	Selenium	New metals data from USGS
0401A	Harrison Bayou (unclassified water body east of Karnack in Marion County)	Dissolved oxygen	New water data from USGS
0505G	Wards Creek (unclassified water body east of Hallsville in Harrison County)	Dissolved oxygen	New data submitted during the comment period
0508B	Gum Gully (unclassified water body northwest of Orange in Orange County)	Dissolved oxygen Bacteria	Originally assessed as not supporting, but inadvertently left off the draft list
0611A	East Fork Angelina River (unclassified water body west of Enterprise in Rusk County)	Lead	Under evaluation at the time of the draft list
0817	Navarro Mills Lake	Atrazine	New, recent data indicate that this water body is threatened
0612	Attoyac Bayou	Lead Cadmium	Under evaluation at the time of the draft list
1001	San Jacinto River Tidal	Dioxin (in fish and crab tissue)	Error in 1999 assessment
1226B	Green Creek (unclassified water body south of Clairette in Erath County)	Dissolved oxygen	Originally assessed as not supporting, but inadvertently left off the draft list
1901	Lower San Antonio River	Bacteria	Error in 1999 assessment
2438	Bayport Channel	Dioxin (in fish and crab tissue)	Error in 1999 assessment

Comments on the 11 new water bodies added to the list are encouraged. Comments may be submitted to Patrick Roques, MC 150, Texas Natural Resource Conservation Commission, Monitoring Operations Division, P.O. Box 13087, Austin, Texas 78711-3087. For overnight mail packages, send to Patrick Roques, Texas Natural Resource Conservation Commission, Monitoring Operations Division, MC 150, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Comments may also be faxed to Patrick Roques at (512) 239-4420, or e-mailed to *proques@tnrcc.state.tx.us*. Comments will be accepted for 30 days after publication of this notice, i.e., comments must be received by TNRCC no later than **5:00 p.m. on May 29, 2000**.

TNRCC's responses to all comments will be summarized and published no later than six weeks after final approval of the list by EPA.

More detailed information on these 11 water bodies and the draft 2000 CWA §303(d) List is available on the TNRCC internet site at: **http://www.tnrcc.state.tx.us/water/quality/**. The documents on the internet site include (1) the second draft 2000 CWA §303(d) List; (2) the list of Water Bodies and Parameters Proposed for Removal from the 2000 CWA §303(d) List; (3) the list of Water Bodies Considered But Not Listed, FY 2000; and (4) the assessment and listing methodology. These documents may also be obtained upon written or verbal request from Louanne Jones, Texas Natural Resource Conservation Commission, Technical Analysis Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087, email *lojones@tnrcc.state.tx.us*, or telephone number (512) 239-2310.

TRD-200002750
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 19, 2000

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Notice of Comment Period and Public Meeting on Draft Concrete Batch Plant Standard Permit

The Texas Natural Resource Conservation Commission (TNRCC) is providing an opportunity for public comment and a public meeting in order to receive testimony concerning a draft concrete batch plant (CBP) standard permit proposed for issuance under 30 TAC Chapter 116, Subchapter F.

The New Source Review Program under Chapter 116 requires any person who plans to construct any new facility or to engage in the modification of any existing facility which may emit air contaminants into the air of the state shall obtain a permit pursuant to §116.111, or satisfy the conditions of a standard permit, a flexible permit, or a permit by rule before any actual work is begun on the facility. A standard permit authorizes the construction or modification of a group of facilities which are similar in terms of operations, processes, and emissions.

A draft standard permit is subject to the procedural requirements of §116.603, which includes a 30-day public comment period and a public meeting to provide an additional opportunity for public comment. Any person who may be affected by the emission of air pollutants from facilities that may be registered under the standard permit is entitled to submit written or verbal comments regarding the proposed standard permit.

After a standard permit is issued, the TNRCC receives registrations from individual plant sites to use the standard permit and reviews the registrations to ensure that the facilities qualify for the standard permit. Construction may begin any time after receipt of written notification from the TNRCC, if there are no objections or the facility is contiguous to or in the right-of-way of a public works project. For all other concrete batch plant registrations under this standard permit, public notice and opportunity for a contested case hearing will be required on a case-by-case basis.

In general, concrete batch plants store, convey, measure, and discharge concrete constituents (water, cement, fine and coarse aggregate) into trucks for transport to a job site. The draft CBP Standard Permit would be applicable to permanent, temporary, and specialty concrete batch plants. General requirements for controlling emissions from sources, facilities, and activities at specific plant sites, as well as, previously mentioned administrative requirements (registration, TNRCC approval, and public notice) are contained in the draft CBP standard permit. Depending on the type of plant site for which authorization is requested, additional controls are also required.

A public meeting on the draft CBP standard permit will be held May 16, 2000, at 1:30 p.m. in Building F, Room 3202A at the Texas Natural Resource Conservation Commission complex, located at 12100 Park 35 Circle, Austin. The meeting is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the meeting; however, TNRCC staff members will be available to discuss the draft CBP standard permit 30 minutes prior to the meeting and will also answer questions after the meeting.

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.

Copies of the draft CBP standard permit and Background Summary Document may be obtained from the TNRCC Internet site at http://www.tnrcc.state.tx.us/air/nsr_permits or by contacting the TNRCC Office of Permitting, Remediation and Registration, Air Permits Division at (512) 239-1240. Comments may be submitted to Anne Inman, Office of Permitting, Remediation and Registration, Air Permits Division, MC 162, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-1300. All comments should reference the draft CBP standard permit. Comments must be received by 5:00 p.m. on May 31, 2000. To inquire about the submittal of comments or for further information, contact Anne Inman at (512) 239-1276.

TRD-200002655
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 14, 2000

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Notice of Public Hearing (Chapter 290)

The Texas Natural Resource Conservation Commission (TNRCC or commission) will conduct a public hearing to receive testimony regarding 30 TAC Chapter 290, relating to Public Drinking Water. This notice is given under the requirements of the Texas Government Code, Subchapter B, Chapter 2001.

This rule implements the federal Stage 1 Disinfectants and Disinfection By-products Rule (DBP1R), 63 Fed Reg 69390 (1998) and the federal Interim Enhanced Surface Water Treatment Rule (IESWTR), 63 Fed Reg 69478 (1998). The rule will also make changes to the state design criteria for drinking water treatment plants and clarify existing regulatory requirements.

A public hearing on this proposal will be held in Austin on May 12, 2000 in Building E, Room 201S at 9:00 a.m. of the commission's central office, located at 12100 North IH-35, Park 35 Technical Center, Austin, Texas 78753. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussions will not occur 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.

Comments may be submitted to Angela Slupe, Office of Environmental Policy, Analysis, and Assessment, MC205, P.O. Box 13087,

Austin, Texas 78711-3087, or faxed to (512) 239-4808. All comments should reference Rule Log Number 1999-015-290-WT. Comments must be received by 5:00pm., May 22, 2000. For further information contact Jack Schulze, P. E., Office of Permitting, Water Permits and Water Resource Management, (512) 239-6046.

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-200002730
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 18, 2000

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Notice of Receipt of Application and Intent to Obtain A Municipal Solid Waste Permit

APPLICATION. City of El Paso, 7969 San Paulo Drive, El Paso, Texas 79915. The Proposed Clint Municipal Landfill is located approximately 0.25 miles north of the intersection at IH-10 and FM 1110, east of FM 1110 approximately 0.25 miles in El Paso County. The city has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a Type I municipal solid waste landfill which would authorize the disposal of municipal solid waste. The permit application is available for viewing and copying at the City of El Paso, Department of Solid Waste Management, 7969 San Paulo Drive, El Paso, Texas in El Paso County, Phone: (915) 621-6700.

The TNRCC Executive Director has determined the application is administratively complete and will conduct a technical review of the application. This application was submitted to the TNRCC on February 1, 2000. After completion of that review, the TNRCC will issue a Notice of Application and Executive Director's Preliminary Decision.

MAILING LISTS. You may ask to be placed on a mailing list to obtain additional information regarding this application. You may also ask to be on a county-wide mailing list to receive public notices for all TNRCC permits in the county. To get on a mailing list, send a request to the Office of the Chief Clerk, at the address listed below.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments on this application. The TNRCC will hold a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the application. A public meeting is not a contested case hearing. Information concerning this meeting will be given in a later public notice. Written public comments should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. You are encouraged to submit your comments as soon as possible so your concerns can be considered during the review of the application.

ADDITIONAL NOTICE. After the TNRCC completes the technical review of the application, the Executive Director may prepare a draft permit and will issue a preliminary decision on the application. Notice of the Application and Preliminary Decision will be published and mailed to those who are on or who asked to be on the county-wide mailing list or the mailing list for this application. That notice will contain the final deadline for submitting public comments.

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 otherwise 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 are on the county-wide mailing list or the mailing list for this application. The mailing will also provide instructions for requesting reconsideration of the executive director's decision and for requesting a contested case hearing. A contested case hearing is a legal proceeding similar to a civil trial in state district court. A person who may be affected by the facility is entitled to request a contested case hearing. 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. Issues that are not raised in public comments may not be considered during a hearing.

INFORMATION. If you need more information about this permit application or the permitting process (such as being added to the mailing list), please call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TNRCC can be found at our web site at **www.tnrcc.state.tx.us**.

Further information may also be obtained from the City of El Paso at its address stated above or by calling Ms. Emma A. Enriquez, Deputy Manager-Municipal Solid Waste Management at (915) 621-6700.

TRD-200002733
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 18, 2000

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Notice of Water Rights Application

Notice is given that H & L NEW GULF INC., P.O. Box 686, Graham, Texas 76450, applicant, seeks to amend Certificate of Adjudication Number 3421-B, pursuant to §11.122 and §11.042, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq.* Certificate of Adjudication Number 13-3421 was issued to Texas Gulf, Inc. on February 7, 1985, and authorized the owner, with a time priority of September 13, 1928, to maintain an existing dam and reservoir on the San Bernard River and to impound therein not to exceed 2 acre-feet of water, to maintain an existing off-channel reservoir and to impound therein not to exceed 2150 acre-feet of water, and to divert and use not to exceed 20,000 acre- feet of water per annum from the San Bernard River, Brazos-Colorado Coastal Basin, at a maximum rate of 40,000 gpm (88.89 cfs) for mining purposes in the Seth Ingram Survey, Abstract Number 33, Wharton County, Texas. The certificate, as amended twice, includes mining, municipal, irrigation and industrial use of the authorized water. The certificate, as amended, is currently owned by H & L New Gulf Inc., a Texas Corporation, Leonard Wittig Grass Farms., Inc, a Texas Corporation and Newgulf Power Ventures Inc. H & L New Gulf's share of the certificate, as amended, includes authorization to impound 1.74 acre-feet of water in the on-channel reservoir, to impound 1914.5 acre-feet of water in the off-channel reservoir and to divert not to exceed 17,400 acre-feet of water per annum at a maximum rate of 20,000 gpm from a specific point on the San Bernard River for mining, municipal and industrial purposes and into the off-channel reservoir for subsequent use. Pursuant to a sales option agreement between the applicant and Phillips Petroleum Company, the applicant seeks authorization to amend the certificate: 1) to change the purpose of use of 16,400

acre-feet per annum of their water currently authorized for mining, municipal, irrigation and municipal purposes to industrial purposes; 2) to add a diversion point on the San Bernard River approximately 15 river miles downstream at the diversion point authorized by Phillips Petroleum Company's Certificate of Adjudication Number 13-3423 at their Petroleum Refinery and Petrochemical Complex at Sweeny, Texas; 3) to change the place of use of the water to the Phillips complex at Sweeny; 4) to allow use from the additional diversion point of "run of the river" water, and 5) to allow use from the additional diversion point of water diverted from the up-stream point into the off-channel reservoir and diverted back into the River and conveyed via the bed and banks of the river to the additional diversion point. Applicant has indicated that they will meter the quantity of water diverted from the San Bernard River into the off-channel reservoir for storage and monitor the amount and quality of water diverted back into the San Bernard for transport downstream, pursuant to the "bed and bank" provision of this amendment application, for diversion at the Phillips petrochemical complex in Sweeny, Texas. Applicant has also indicated that they will account for carriage losses during transportation of the water to the new diversion point. No other changes to the certificate is requested. This notice is being sent to you as owner of one of 4 water right holders with a diversion point in the San Bernard River Watershed between the existing diversion point and the requested additional diversion point. Any proposed amendment for "run of the river" water requested in the application at the additional diversion point by the Executive Director will include a condition that it be junior in priority to these 6 water rights on the river in the Brazos-Colorado Coastal Basin.

COMANCHE TRACE RANCH AND GOLF CLUB, L. L. L. P., applicant, seeks a permit pursuant to §§11.122 and 11.042, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq.* Certificate of Adjudication Number 18-2002 authorizes the owner to divert and use not to exceed 136 acre-feet of water per annum at a maximum diversion rate of 2.4 cfs (1080 gpm) from a point on the South Bank of the Guadalupe River, Guadalupe River Basin in Kerr County for irrigation of 99 acres of land in the William Watt Survey 65, Abstract Number 365, Kerr County. Applicant seeks to amend Certificate Number 2002 by changing the area to be irrigated to 471.4 acres out of 1131.78 acres of land in the following surveys in Kerr County: William T. Crook Survey Number 63, Abstract 116, William Watt Survey Number 64, Abstract Number 363, William Watt Survey Number 65, Abstract Number 364, William Watt Survey Number 66, Abstract Number 365 and the Thomas Jackson Survey Number 394, Abstract Number 212. Ownership of the land to be irrigated is evidenced by a Warranty Deed recorded in Volume 971 Pages 698-706 in the Official Records of Kerr County, Texas. Applicant also seeks authorization to construct and maintain 4 on-channel reservoirs and 6 off channel ponds described as follows: Reservoir A is an existing off channel reservoir located 4.5 miles south of Kerrville impounding 24.3 acre-feet of water with a surface area of 2.21 acres. The reservoir is N42øE, 3817 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.984øN Latitude and 99.117øW Longitude. Reservoir B, an off-channel reservoir is located 4.4 miles south of Kerrville and will impound 6.0 acre- feet of water with a surface area of 0.9 acres. The reservoir will be N 41.73ø E, 5129 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.985øN Latitude and 99.119øW Longitude. Reservoir C, an off-channel reservoir is located 4.2 miles south of Kerrville and will impound 4.4 acre-feet of water with a surface area of 0.97 acres. The reservoir will be N 37.53øE, 5997 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.987øN Latitude and 99.119øW Longitude. Reservoir D, an on-channel reservoir on Dry Hollow, tributary of the Guadalupe River is located 4.4 miles south of Kerrville and will impound 9.5 acre-feet of water with a surface area of 1.60 acres. The reservoir will be N 47.8øE, 8559 feet from the west corner of the William Watt Survey Number 65, Abstract Number 364, also being 29.985øN Latitude and 99.1099øW Longitude. Reservoir E, an off-channel reservoir is located 4.7 miles south of Kerrville and will impound 1.2 acre-feet of water with a surface area of 0.29 acres. The reservoir will be N 30.17øE, 1596 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.975øN Latitude and 99.125øW Longitude. Reservoir F, an on-channel reservoir on an unnamed tributary of Dry Hollow is located 4.3 miles south of Kerrville and will impound 0.4 acre-feet of water with a surface area of 0.09 acres. The reservoir will be N 1.76øW, 3777 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.985øN Latitude and 99.133øW Longitude. Reservoir G, an on-channel reservoir on an unnamed tributary of Dry Hollow is located 4.2 miles south of Kerrville and will impound 1.7 acre-feet of water with a surface area of .34 acres. The reservoir will be N 13.18øE, 4583 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.987øN Latitude and 99.125øW Longitude. Reservoir H, an on-channel reservoir on an unnamed tributary of Dry Hollow is located 4 miles south of Kerrville and will impound 22.3 acre-feet of water with a surface area of 2.10 acres. The reservoir will be N 17.88øE, 5485 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.988øN Latitude and 99.123øW Longitude. Reservoir I, an off-channel reservoir is located 4.1 miles south of Kerrville and will impound 65 acre-feet of water with a surface area of 8.71 acres. The reservoir will be N 43øE, 8428 feet from the south corner of the William Watt Survey Number 66, Abstract Number 365, also being 29.989øN Latitude and 99.109øW Longitude. Reservoir J, an off-channel reservoir is located 4.2 miles south of Kerrville and will impound 1.5 acre-feet of water with a surface area of .34 acres. The reservoir will be N 46.92øE, 10926 feet from the west corner of the William Watt Survey Number 65, Abstract Number 364, also being 29.991øN Latitude and 99.107øW Latitude. Reservoir K, an on-channel reservoir on Dry Hollow is located 4.1 miles south of Kerrville and will impound 0.3 acre-feet of water with a surface area of .09 acres. The reservoir will be N 41.68øE, 7094 feet from the south corner of the William Watt Survey Number 66, Abstract 365, Kerr County, also being 29.988øN Latitude and 99.118øW Longitude. Applicant seeks authorization to divert the 136 acre-feet of water authorized under Certificate Number 18-2002 and 150 acre-feet of water leased by applicant and authorized by Certificate of Adjudication Number 18-2001, as amended, from the diversion point authorized by Certificate Number 18-2002 and convey aforesaid water to the 5 on-channel reservoirs (D, F, G, H and K) and to Reservoir I, an off-channel reservoir, for subsequent diversion for irrigation purposes. Applicant also seeks authorization to convey the authorized water down the bed and banks of an unnamed tributary of Dry Hollow between Reservoirs F, G and H for re-circulation purposes. No additional state water is requested. Applicant will account for evaporative losses from the on-channel ponds (D, F, G, H and K) and conveyance losses from the re-circulation system utilizing water authorized by Certificate Nos. 18-2002 and 18-2001, as amended. The off-channel reservoirs will be kept full with additional contract water, effluent purchased from the City of Kerrville and groundwater from applicant's on-site wells.

Notice is given that HERFF CORNELIUS, applicant, seeks a permit pursuant to §11.121, Texas water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §295.1, *et seq.*

The applicant seeks authorization to maintain an existing dam and reservoir with a capacity of 344 acre-feet on Live Oak Bayou, Brazos-Colorado Coastal Basin, an off-channel reservoir with a capacity of 29.94 acre-feet and to divert not to exceed 2400 acre-feet of water per annum from the reservoir on Live Oak Bayou into the off-channel reservoir for subsequent irrigation use or directly to fields for irrigation of 400 acres of land out of three tracts totaling 1300 acres located in the Solomon Williams and William Rabb Survey Number 53, Abstracts Number 106 and 78, Matagorda County, Texas. The applicant has also requested use of the water stored in the off-channel reservoir for industrial use (crawfish farming). The off-channel reservoir is located N75.51øE., 3959 feet from the SW corner of the Solomon Williams Survey Number 53, Abstract Number 103, also being Latitude 28.89øN, Longitude 95.78øW. The diversion point for the water from the on-channel reservoir is located 62.18øE, 3699 feet from the aforesaid corner, also being Latitude 28.89ø, Longitude 95.78ø W.

Notice is given that U.S. HOMES CORPORATION, 13111 N. Central Expressway, Suite 200, Dallas, TX 75243, applicant, seeks a permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission Rules 30 TAC §§295.1, *et seq.* The applicant seeks authorization to construct and maintain two reservoirs on an un-named tributary of Sloan Creek, tributary of Wilson Creek, tributary of East Fork Trinity River, tributary of the Trinity River, Trinity River Basin. The reservoirs will be used for in-place recreational purposes as part of a planned residential development and will be located in the Robert Fitzhugh Survey, Abstract Number 317, approximately 5.3 miles southeast of McKinney, Collin County, Texas. Station 0+00 on the centerline of the dam for Reservoir Number 1 will be located at Latitude 33.13øN, Longitude 96.64øW also described as bearing N68øE 3100 feet form the SW corner of the aforementioned Survey. The mid-point on the centerline of the dam for Reservoir Number 2 will be located at Latitude 33.13øN, Longitude 96.60øW also described as bearing N68øE 3100 feet form the SW corner of the aforementioned Survey. Reservoir Number 1 will have a surface area of 0.28 acres and a capacity of 1.3 acre-feet of water at its normal operating elevation. Reservoir Number 2 will have a surface area of 1.0 acres and a capacity of 5.1 acre-feet of water at its normal operating elevation. The applicant has indicated that Reservoir Number 2 will be immediately downstream of Reservoir Number 1, and that both reservoirs will be kept full with either ground water or municipal treated water.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at www.tnrcc.state.tx.us.

TRD-200002735
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 18, 2000

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Notice of Water Rights Application

HOUSTON FUEL OIL TERMINAL COMPANY has applied to the Texas Natural Resource Conservation Commission (TNRCC) for a temporary water use permit to divert and use 100 acre-feet of water at a maximum diversion rate of 5.57 cfs (cubic feet per second) / 2500 gpm (gallons per minute) for mining (hydrostatic testing of new tanks) purposes during a two year period from Buffalo Bayou, tributary of the San Jacinto River, San Jacinto River Basin. The requested water will be diverted from a point at the intersection of SH 134 and Buffalo Bayou, approximately 15.5 miles east of Houston and 2.0 miles northwest of Deer Park, Harris County, Texas. Public notice of the application is being mailed to all of the water right holders downstream of the applicants diversion point on the San Jacinto River. The temporary permit, if issued, will be junior in priority to all senior and superior water rights in the San Jacinto River Basin.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, by May 2, 2000. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed by May 2, 2000. The Executive Director may approve the application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit any proposed conditions to the requested amendment which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TNRCC Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not issue the requested amendment and may forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105,

TNRCC, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103 at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TNRCC can be found at our web site at **www.tnrcc.state.tx.us**.

TRD-200002736
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: April 18, 2000

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Public Notice - Notice of Change in Remedial Design

In accordance with 30 TAC §335.349(b)(2), the executive director of the Texas Natural Resource Conservation Commission is issuing this public notice of a change in the remedial design for the Jensen Drive state Superfund site. Section 335.349(b)(2) concerns the requirements associated with a significant change in the proposed remedial action that occurs after the initial public meeting to discuss the remedial action for the site, and which affects the scope, performance, or cost of the proposed remedial action. This rule requires the executive director to notify the potentially responsible parties by certified mail of the change and issue a public notice in the *Texas Register* and in a newspaper of general circulation in the county in which the facility is located. Section 335.349(b)(2) also requires this public notice to provide information regarding the significant changes in the proposed remedial action. A copy of this notice was also published in the Houston Chronicle on April 26, 2000.

The Jensen Drive site consists of 3.8 acres, and is located at 3603 Jensen Drive within the city limits of Houston, Harris County, Texas. The site was an inactive scrap salvage facility contaminated with lead, polychlorinated biphenyls, and arsenic. A public meeting was held on August 12, 1997, to receive comments on the proposed remedial action, which at the time consisted of excavation, on-site consolidation in a pit, and covered with a cap. An administrative order (Docket No. 97-1182-SPF) proposed that the remedial action consist of excavation of a pit and consolidation of the estimated 4,900 cubic yards of contaminated soil. The pile was to be covered by a low permeability cap to minimize the leaching of soil contaminants to the groundwater.

The significant change affects the design of the containment cell and the cap, resulting in better protection of the groundwater at an additional cost of implementation. The new design of the containment cell has been approved by the United States Environmental Protection Agency.

The change in the remedial design includes installation of an impermeable liner at the bottom of the consolidated pile of contaminated soil. The bottom liner of the pit will consist of a three foot bed of clay, overlaid with a 60 mil flexible membrane. Excavated soil will be placed on the membrane and will be covered with another 60 mil flexible membrane and a three-foot layer of clay. The top and bottom flexible membrane layers will be heat welded at the edges so that the contaminated soil is completely isolated. A monitor well will be installed within the containment cell to detect any leachate, if generated.

For further information, please contact the project manager, Mr. Subhash C. Pal, P.E., Texas Natural Resource Conservation Commission, Remediation Division, at (512) 239-4513 or Mr. Garrett Arthur, Texas Natural Resource Conservation Commission, Environmental Law Division at (512) 239- 5757.

TRD-200002656
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: April 14, 2000

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On April 11, 2000, Austico Telecommunications, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60040. Applicant intends to expand its geographic area to include the entire state of Texas.

The Application: Application of Austico Telecommunications, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 22402.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the Public Utility Commission of Texas at P.O. Box 13326, Austin, Texas, 78711-3326 no later than May 3, 2000. You may contact the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22402.

TRD-200002618
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2000

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Notice of Application for 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 April 11, 2000, for a certificate of operating authority (COA), pursuant to §§54.101-54.105 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of GCEC Technologies for a Certificate of Operating Authority, Docket Number 22396 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, ISDN, T1-Private Line, Switch 56 KBPS, Frame Relay, Fractional T1, and long distance services.

Applicant's requested COA 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 at P.O. Box 13326, Austin, Texas, 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 no later than May 3, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200002617
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2000

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Notice of Application to Amend Certificated Service Area Boundaries

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 14, 2000, to amend a certificated service area boundary in Cameron County pursuant to §§14.001, 37.051, and 37.054, 37.056, 37.057 of the Public Utility Regulatory Act, Texas Utilities Code Annotated (Vernon 1998 & Supp. 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application of Public Utilities Board of the City of Brownsville, Texas (PUB) to Amend Certificated Service Area Boundaries Within Cameron County. Docket Number 22409.

The Application: PUB requests the boundary change to allow electrical service to two areas: 1) an approximately 100-acre tract on which the Cameron County Detention facility will be constructed. The site is located in an area which has been recently annexed by the City of Brownsville. The land is unimproved at this time and no electric service is being provided. In order to serve the facility, PUB will extend a three-phase distribution line from its Titan Substation 1,500 feet north and 12,000 feet west along a Central Power & Light (CP&L) transmission line and 6,300 feet north along Old Alice Highway. 2) an approximately 765-acre tract on which the Estrella del Norte residential subdivision is being developed. The area is bounded on the north by Naranjo Road, on the south by Resaca de Rancho Viejo, and the east and west by vacant range/ farm land and has recently been annexed by the City of Brownsville. The area is unimproved and no electric service is presently being provided. CP&L presently has a small distribution line west of this area. In order to serve the subdivision, PUB will extend a three-phase distribution line from its Titan Substation 1,500 feet north and 5,000 feet west along a CP&L transmission line. Copies of the application and additional associated maps are available for reviewing at the PUB office, 1425 Robin Hood Drive, Brownsville, Texas 78523- 3270. Persons with questions about this project should contact John W. Davidson, Davidson & Troilo, P.C., Attorney for PUB at (210) 349-6484.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas at P. O. Box 13326, Austin, Texas 78711-3326 or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. The deadline for intervention in the proceeding will be established. The commission should receive a letter requesting intervention.

TRD-200002745
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 18, 2000

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Public Notice of Amendment to Interconnection Agreement

On April 13, 2000, Southwestern Bell Telephone Company and DMJ Communications, 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) (PURA). The joint application has been designated Docket Number 22404. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22404. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22404.

TRD-200002765
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On April 14, 2000, Southwestern Bell Telephone Company and PhoneSense, 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) (PURA). The joint application has been designated Docket Number 22407. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22407. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22407.

TRD-200002766
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2000

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Public Notice of Amendment to Interconnection Agreement

On April 14, 2000, Southwestern Bell Telephone Company and Vectris Telecom, 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) (PURA). The joint application has been designated Docket Number 22408. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22408. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 12, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22408.

TRD-200002767
Rhonda Dempsey

Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2000

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Public Notice of Interconnection Agreement

On April 10, 2000, Southwestern Bell Telephone Company and Express Telecommunications, 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) (PURA). The joint application has been designated Docket Number 22389. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22389. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 10, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22389.

TRD-200002612

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2000

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Public Notice of Interconnection Agreement

On April 11, 2000, Southwestern Bell Telephone Company and TransAmerican Telephone, Inc., collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998) (PURA). The joint application has been designated Docket Number 22400. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing ten copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 22400. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by May 11, 2000, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326. You may call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 22400.

TRD-200002723
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 17, 2000

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Public Notice of Request for Comments on Form Regarding Reporting Requirements for Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers

At the April 12, 2000, Open Meeting of the Public Utility Commission of Texas (commission), the commission approved publication of a proposed amendment to substantive rule §26.107 relating to Registration of Nondominant Telecommunications Carriers. The proposed amendment implements the provisions of the Public Utility Regulatory Act (PURA) §§17.051-17.053 and §§64.051-64.053. The commission also approved soliciting comments on a proposed new form, *Reporting Requirements for Interexchange Carriers, Prepaid Calling Services Companies, and Other Nondominant Telecommunications Carriers*, to implement the registration requirements of §26.107 as proposed. Project Number 21456, *Amendments to Substantive Rules §§26.107, 26.109, 26.111, and New §26.114 Regarding Certification, Registration and Reporting Requirements in Relation to SB 560 and Miscellaneous Revisions*, is assigned to this proceeding. The proposed amendment to §26.107 will be published in the *Texas Register*. The proposed form is available through the commission's Central Records or the commission's web site under Project Number 21456.

The commission will hold a public hearing on the proposed amendment and new form on Wednesday, May 31, 2000, at 9:00 a.m. in Hearing Room Gee, located in the William B. Travis Building at 1701 North Congress Avenue, Austin, Texas, 78701.

Comments on the proposed new form may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 within 30 days of the date of publication of this notice. All comments should reference Project Number 21456.

Questions concerning this notice or the public hearing should be referred to Denise Taylor, Office of Customer Protection, (512) 936-7124, or Tamarian Stevens, Telecommunications Industry Analysis, (512) 936-7337. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002615
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2000

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Request for Comments on Statewide Standard Offer and Market Transformation Contract Templates

The Public Utility Commission of Texas (commission) proposes new program templates, *Statewide Standard Offer Contracts and Market Transformation Contracts*, that may be used by utilities to fulfill the requirements of the commission's Substantive Rule §25.181 relating to Energy Efficiency Goal. Project Number 22241 is assigned to this proceeding. The proposed contract templates will be used to implement uniform statewide energy efficiency programs, designed in compliance with §25.181, and to achieve the energy efficiency goal provision in the Public Utility Regulatory Act (PURA) §39.905.

Copies of the proposed contract templates are available in the commission's Central Records Division, Room G-113, under Project Number 22241 or through the commission web page at www.puc.state.tx.us.

Written comments on the proposed contract templates may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, Austin, Texas 78701 within seven days after publication of this notice. All comments should refer to Project Number 22241.

The commission will hold a public workshop on the proposed contract templates on Tuesday, May 9, 2000, at 9:00 a.m. in Hearing Room Gee located in the William B. Travis Building at 1701 North Congress Avenue, Austin, Texas 78701.

Any questions pertaining to the proposed templates should be directed to Nieves López at (512) 936-7397 or nieves.lopez@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200002752
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: April 19, 2000

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Texas State Technical College

Request for Qualifications

A Request for Qualifications (RFQ) is solicited by Texas State Technical College, Waco, Texas for qualified architects interested in being considered for master planning services for the TSTC campus in Waco, Texas. As a minimum, the RFQ must utilize the Statement of Qualifications in the format prepared by the American Institute of Architects (AIA Document B431). Include a list of similar projects completed by your firm within the last ten years. Preference will be given to firms having a broad base in College and University Planning as well as state requirements relating to Texas State Agencies. Projects relating to airport and industrial park development will also be evaluated. In order to expedite routine correspondence during the selection process, also include the e-mail address of your firm's contact person. Additional information may be submitted at architect's option. Upon completion of the evaluation of qualifications by the college's Master Plan Committee, a minimum of 3 and no more than 5 firms will be invited to submit proposals for architectural services.

Scope of Services: (included, but not limited to) Analysis of existing buildings as to utilization and condition, review of MEP needs of buildings, planning for future college building expansion and study of maximizing airport related land for industrial development.

Schedule: Qualifications due May 12, 2000 by 5:00 PM. Mail or deliver two copies to: Jay Teakell, Dean of Administrative and Financial Services, Texas State Technical College, Waco, Texas 76705. If you have question please call 254-867-4801 or E- mail jteakell@tstc.edu

TRD-200002727
Sandra J. Krumnow
Agency Liaison
Texas State Technical College

Filed: April 18, 2000

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Texas Department of Transportation

Correction of Error - Waller County Request for Proposal for Aviation Professional Services

Correction of Error - Waller County Request for Proposal for Aviation Professional Services: A Request for Proposal to provide, in accordance with Government Code, Chapter 2254, Subchapter A, a site analysis, airport master plan, and an environmental impact statement, was published in the April 7, 2000, issue of the *Texas Register* (25 TexReg 3109). The following information is being published in order to correct an error that was contained in that notice.

Instead of the Environmental Impact Statement, the professional service provider will need to conduct an Environmental Assessment.

If you have any questions, please contact Linda Howard at (512) 416-4540.

TRD-200002756
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 19, 2000

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Request for Qualification Statement

Request for Qualification Statement: The following Airport Sponsor, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an Aviation Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT, Aviation Division will solicit and receive qualifications for professional engineering design services as described in the following project scope:

Airport Sponsor: County of Montgomery; Montgomery County Airport; TxDOT Project Number: 0012CONRO. Project Scope: Provide engineering/design services to construct TW to new hangar area west of RW 19; construct new apron west of RW 19; and associated appurtenances at the Montgomery County Airport. Future subsequent design services may include: rehabilitation and marking of pavements and associated appurtenances and preparation of an Airport Master Plan. Project Manager: Bijan Jamalabad

Interested firms shall utilize the **recently updated Form 439**, titled "Aviation Consultant Services Questionnaire", **(August 1999 version)**. The forms may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, Phone number, 1-800-68-PILOT (74568). The form can be e-mailed by request or may be downloaded from the TxDOT web site, URL address http://www.dot.state.tx.us./insdtdot/orgchart/avn/avninfo/avninfo.htm. Download the file from the selection "Consultant Services Questionnaire Packet". The form may not be altered in any way, and all printing must be in black. QUALIFICATIONS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. **The form is a Microsoft Word, Version 7, document.**

Two completed, unfolded copies of Form 439 (August 1999 version), for this project must be postmarked by U. S. Mail by midnight May 11, 2000 (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 May 12, 2000; overnight address: TxDOT, Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. May 12, 2000 (CDST); hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. The two pages of instructions should not be forwarded with the completed questionnaires. Electronic facsimiles will not be accepted.

NEW DELIVERY OPTION. Your Form 439 may be e-mailed to TxDOT, e-mail address **AVNRFQ@dot.state.tx.us**. E-mails must be received by midnight May 11, 2000. Received times will be determined by the marked time and date as the e-mail is received into the TxDOT network system. Please be sure and e-mail your forms in sufficient time to ensure timely delivery into the TxDOT system. After receipt, you will be notified by return e-mail of the date and time of receipt. Return notification may be delayed by a day or two as the forms will be opened and printed at the TxDOT offices. Before e-mailing the form, please be sure and check your completion of the form. TxDOT will not change the formatting or information contained on the form following receipt. Additionally, on e-mailed forms, written signatures are not required on the form. You may type in the responsible party's name on the signature line.

The airport sponsor's duly appointed committee will review all professional qualifications and select three to five firms to submit proposals. Those firms selected will be required to provide more detailed, project-specific proposals which address the project team, technical approach, Disadvantaged Business Enterprises (DBE) participation, design schedule, and other project matters, prior to the final selection process. The final consultant selection by the sponsor's committee will generally be made following the completion of review of proposals and/or consultant interviews. The airport sponsor reserves the right to reject any or all statements of qualifications, and to conduct new professional services selection procedures. If you have any procedural questions, please contact Karon Wiedemann, Director, Grant Management, or for technical questions, please contact the designated Project Manager, Bijan Jamalabad, at 1-800-68-PILOT (74568).

TRD-200002757
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: April 19, 2000

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University of Houston System

Request for Proposal

Request for Proposals Review and Assessment Of Women's Issues

GENERAL INFORMATION

In accordance with Government Code, Chapter 2254, Subchapter B, the University of Houston System is soliciting Request For Proposals (RFP) from firms or individuals to provide consulting services for the review and assessment of women's issues on the University of Houston Campus.

DESCRIPTION OF REQUESTED SERVICES

Information concerning the Request For Proposal may be obtained by contacting Ileana Trevino, Executive Director for Affirmative Action, University of Houston, Houston, Texas 77204-3261 or at e-mail address **itrevino@uh.edu**.

This consultant should have extensive experience in diversity issues, specifically as they relate to employment and compensation. Experience of working with institutes of higher education would be a desired attribute though not essential. The ability to take the informa-

tion gathered and draw meaningful analysis through statistical means is desired. The consultants are expected to delineate their particular methodologies and defend them. Additionally, knowledge of organizational cultures and how to assess them is especially desired. A committee will choose the successful consultant.

Proposals must be received on or before **3:00 p.m., May 19, 2000**.

TRD-200002749
Dennis Duffy
General Counsel, University of Houston System
University of Houston
Filed: April 19, 2000

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Texas Workforce Commission

Employer Dependent Care Collaboration

REQUEST FOR PROPOSALS

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission is soliciting project proposals to establish or manage employer dependent care collaboration projects to improve community dependent care services for working parents; or to promote employer dependent care collaboration projects at the community, regional or state level. This Request for Proposals invites applicants to submit proposals to build capacity among employers to forecast the dependent care needs of the workforce, and to assist the community and service providers in meeting those needs, through employer dependent care collaboration.

B. AUTHORIZATION TO AWARD CONTRACT

TWC is authorized to issue this RFP and award contracts under the Labor Code, Chapter 81, Section 81.0045, and the state rules at 40 TAC Chapter 809, and the TWC Financial Manual for Grants and Contracts, specifically Module 2 relating to the Child Care and Development program.

C. AVAILABLE FUNDING

Up to $1,500,000 will be available for operation of the Employer Dependent Care Collaborations. Individual funding levels will be determined by the number and scope of applications received, but grants in the $25,000 to $75,000 range are likely. The Collaborations will be funded through August 31, 2001.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals must complete an Request for Proposal (RFP) Package and provide required documentation as requested in the application in order to be considered eligible.

E. PROJECT SCHEDULE

Application submission deadline is May 30, 2000. The anticipated contract effective date is July 1, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Demonstrated Effectiveness of the Contractor, 30 points; Quality of Proposal, 25 points; Cost Reasonableness, 20 points; Collaboration and Coordination, 15 points; Financial Integrity/Cash Flow, 10 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

TWC will use competitive negotiation to determine awards. Proposals will be evaluated and tentatively ranked by TWC. Applicants submitting superior proposals may be invited to make oral presentations to TWC.

H. PAYMENT

The basis of payment for this award shall be reimbursement of actual allowable cost up to budgeted levels and subject to budget limitations.

I. TWC'S CONTACT PERSON

For further information and to request a package for RFP # GPFP 00-05, contact Elwood (Woody) Engebretson, Program Specialist, Texas Workforce Commission, Room 440T, 101 East 15th Street, Austin, TX 78778-0001, (512) 936-4874, fax (512) 936-3420, e-mail address elwood.engebretson@twc.state.tx.us

TRD-200002755
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: April 19, 2000

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Notice of Available Funds for Fiscal Year 2001

Notice of Available Funds for Fiscal Year 2001 for New or Established Apprenticeship Training Programs Not Currently Receiving Funding from the Texas Workforce Commission under the Texas Education Code, Chapter 133.

Filing Authority. The notice of available funds for apprenticeship training programs is authorized under the Texas Education Code, Chapter 133.

Eligible Applicants. The Texas Workforce Commission is requesting preliminary contact-hour estimates from public school districts and state post-secondary institutions for related instruction (apprentice) classes for new or established apprenticeship training programs not currently receiving funding from the Texas Workforce Commission under Texas Education Code, Chapter 133.

Description. Funds will be available for Fiscal Year 2001 (September 1, 2000-August 31, 2001) to fund programs or new occupations within a program not currently receiving funding under the Texas Education Code, Chapter 133. The purpose of the funds is to provide classroom instruction for related instruction (apprentice) classes of registered apprenticeship training programs. The amount of funding for Fiscal Year 2001 is approximately $80,000 for programs that qualify as new apprenticeship programs.

Qualifications for Funding. To qualify for funding: 1) each apprenticeship training program or new occupation within a program must be certified and registered by the Bureau of Apprenticeship and Training (BAT), U.S. Department of Labor, no later than August 1, 2000; 2) each apprentice must be registered with the BAT in Texas on or before September 1, 2000; 3) each apprentice must be a full-time paid employee in the private sector in Texas; 4) the number of related instruction hours per class must be certified by the BAT as verified in the program standards of the apprenticeship program; 5) a public school district or state post-secondary institution must act as fiscal agent for the funds pursuant to a contract between the apprenticeship program sponsor and the district or institution; and 6) the related instruction (apprentice) class must start in September 2000 and conduct its fourth class meeting no later than October 7, 2000.

Dates of Program. Each class may not start before September 1, 2000, and must end on or before August 31, 2001.

Planning Allocation of Funds. The statewide total number of estimated contact hours that are submitted to the Texas Workforce Commission will be divided into the amount of funds available to determine a preliminary contact-hour rate, not to exceed $4.00 per contact hour. Planning allocations are made to eligible applicants based on the number of estimated contact hours submitted to the Texas Workforce Commission, multiplied by the preliminary contact-hour rate.

Use of Funds. Funds can only be used for related instruction costs such as instructor salaries, instructional supplies, instructional equipment, and other operating expenses. No more than 15% may be used by the eligible applicants for administrative purposes, such as supervisory and/or secretarial salaries, office supplies, or travel.

Requesting the Forms to Submit Preliminary Estimated Contact Hours. A package of information explaining the process for submitting preliminary contact-hour estimates and the process for submitting an application may be obtained by contacting the Apprenticeship Program at (512) 463-9767 or writing to the Apprenticeship Program, Texas Workforce Commission, 101 East 15th Street, Room 144T, Austin, Texas, 78778-0001.

Further Information. For additional information please contact Diane Lamb, Apprenticeship Coordinator, Texas Workforce Commission, at (512) 463-9767.

Deadline for Receipt of Preliminary Contact-Hour Estimates. The Texas Workforce Commission, Apprenticeship Program, must receive preliminary contact-hour estimates for Fiscal Year 2001 apprenticeship training programs no later than 5:00 p.m., Tuesday, May 30, 2000, to be considered for funding.

TRD-200002621

J. Ferris Duhon

Assistant General Counsel

Texas Workforce Commission

Filed: April 13, 2000

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 24 (1999) is cited as follows: 24 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 "23 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 23 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. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), LOIS, Inc. (1-800-364-2512 ext. 152), 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 8, April 9, July 9, and October 8, 1999). 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).

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❑ **Chapter 334** $40 ❑ update service $25/year *(Underground/Aboveground Storage Tanks)*
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