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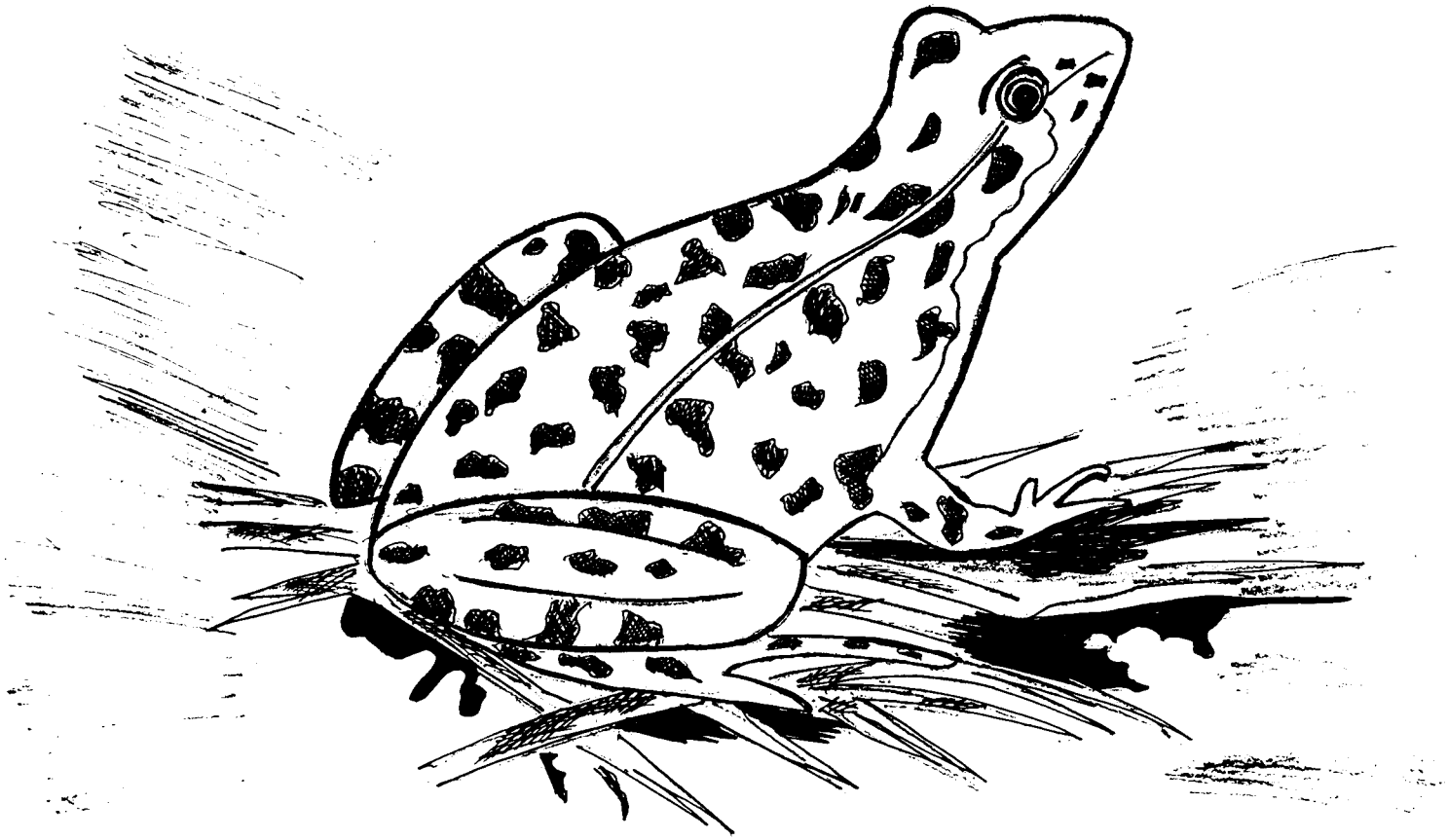

This month's front cover artwork:

Artist: *Maricela Lopez*
12th grade
Universal Goval

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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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.

Office of the Attorney General

Opinions

Opinion No. JC-0263. The Honorable Russell W. Malm, Midland County, Attorney, 200 West Wall Street, Suite 104, Midland, Texas 79701, regarding authority of a sheriff to organize and participate in S.T.A.R. [Sheriffs of Texas Agreed Response], a law enforcement tactical response team (RQ-0199-JC).

S U M M A R Y.A sheriff may not contract with other sheriffs or municipalities to provide general law enforcement services, including investigatory services, without the approval of the commissioners court of his county. Neither may a sheriff do so in the absence of a contract. A sheriff may, subject to budgetary constraints, determine what training is appropriate for his deputies, and where, and under what circumstances, such training shall take place.

Opinion No. JC-0264. Mr. James N. Danford, C.P.A., Parker County, Auditor, 1112 Santa Fe Drive, Weatherford, Texas 76086, regarding whether the Parker County Commissioners Court is authorized to hire an employee to perform purchasing duties in the absence of a purchasing agent appointed pursuant to §262.011 of the Local Government Code, and related questions (RQ-0185-JC).

S U M M A R Y. The commissioners court is authorized to employ persons necessary to conduct county business without express statutory authority provided that such employees are subject to the commissioners court's control and supervision and there is no delegation of the commissioners court's sovereign authority. In the absence of a §262.011 county purchasing agent, the commissioners court may hire an employee to assist the commissioners court and other departments with their purchasing responsibilities, but it may not delegate to the employee authority to make purchases for the county or enter into contracts binding the county. While the commissioners court is "responsible" for the nondelegable duties of determining the items and services to be purchased and binding the county for the purchases, it may designate persons responsible for carrying out the ministerial duties associated with purchasing. The commissioners court may not appoint a purchasing agent pursuant to §262.001 of the Local Government Code. The two-year term of the county purchasing agent's office in Parker County began on February 23, 2000. The appointment of a county purchasing agent pursuant to §262.011 of the Local Government Code is not invalid because of the failure of the special board to set a salary.

Opinion No. JC-0265. The Honorable Bob Turner, Chair, Committee on Public Safety, Texas House of Representatives, P.O. Box 2910, Austin, Texas 78768-2910, regarding validity of a regulation of the Texas Air National Guard that relates to "officers lacking in professional qualifications" (RQ-0197-JC).

S U M M A R Y. An officer could legally be discharged from the Texas Air National Guard for lacking professional qualifications pursuant to a regulation as further defined by a policy letter of the unit commander.

Opinion No. JC-0266. Ms. Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, 333 Guadalupe, Suite 2-350, Austin, Texas 78711-3942, regarding responsibility for enforcement of the Professional Services Procurement Act (RQ-0204-JC).

S U M M A R Y. The Comptroller, and to a lesser extent, the State Auditor, by their approval and audit of claims, have the primary responsibility for requiring state agencies to abide by the directives of the Professional Services Procurement Act, subchapter A of chapter 2254 of the Government Code. The County Auditor, by her approval and audit of claims, has the principal duty for requiring county government to conform to the Professional Services Procurement Act. The Texas Board of Architectural Examiners is the proper entity to enforce the provisions of that statute against its individual registrants.

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

TRD-200005513

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 8, 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 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 64. STANDARDS OF OPERATION FOR LOCAL COURT-APPOINTED VOLUNTEER ADVOCATE PROGRAMS

1 TAC §§64.1, 64.3, 64.5, 64.7, 64.9, 64.11, 64.13

The Office of the Attorney General ("OAG") proposes new Chapter 64, §§64.1, 64.3, 64.5, 64.7, 64.9, 64.11, and 64.13, concerning standards of operation for local court-appointed volunteer advocate programs.

Chapter 264, subchapter G of the Family Code governs the operation and role of court-appointed volunteer advocate programs in providing advocacy services to abused or neglected children. Senate Bill No. 349, enacted by the 75th Legislature in 1997, added to this Act new subsection 264.602(d), which requires the OAG to adopt standards for local volunteer advocate programs. The bill directs the statewide organization with which the OAG contracts to provide training, technical assistance, and evaluation services for the benefit of the local programs to assist the OAG in this endeavor.

The new rules proposed herein establish standards for the local volunteer advocate programs in the following areas. The rules establish eligibility criteria for local programs seeking to obtain financial support under Family Code Chapter 264, subchapter G. The rules establish organizational and operational requirements for eligible local programs and impose a code of ethics for volunteers, employees and directors of the local programs. The rules establish guidelines for disqualifying circumstances and training requirements for volunteers, employees and directors. The rules also establish supervision requirements for volunteers used by the local programs and specify duties of the volunteers. The rules establish a sliding scale of state financial support for local programs in accordance with Family Code §264.602(c), as well as criteria for awarding the state financial support. Finally, the new rules set forth requirements that must be imposed on the local programs by the statewide organization by way of contract, including periodic financial and performance reporting by the local programs on forms promulgated by the OAG.

Proposed Chapter 64 is organized into seven sections. Section 64.1 provides the legal authorization for the rules. Section 64.3 states that the rules apply to local volunteer advocate programs and contracts for services with local volunteer advocate programs. Section 64.5 defines terms as they relate to this chapter. Section 64.7 announces the purpose of this chapter. Section 64.9 pertains to contracts with the local program, setting out the eligibility requirements, criteria for award of contracts, and contract requirements. Section 64.11 describes the scale of state financial support. Section 64.13 provides details concerning the operation of local programs.

Beckie Zieschang, Director of the Budget and Purchasing Division of the OAG, has determined that for the first five-year period that the chapter will be in effect, there will be no fiscal implication for the state or local governments as a result of enforcing or administering these rules. There will be no effect on the local economy or local employment.

Ms. Zieschang also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the establishment of uniform operating standards applicable to all local volunteer advocate programs. There will be no effect on small and large businesses as a result of enforcing these rules. There will be no unusual costs to individuals and other persons who are required to comply with the rules as proposed, as such persons have already been following substantively similar standards and requirements informally imposed by the statewide organization on its members.

The OAG requests comments on the proposed rules from any interested person. Comments may be submitted, in writing, no later than thirty (30) days after the date of publication of this notice to Beth Page, Assistant Attorney General, General Counsel Division, Office of the Attorney General, Box 12548, Capitol Station, Austin, TX 78701, or faxed to (512) 477-6040, or e-mailed to www.Beth.Page@oag.state.tx.us.

The new rules are proposed pursuant to Chapter 264, subchapter G of the Texas Family Code, in particular §264.602(d), which provides that the OAG by rule shall adopt standards for local volunteer advocate programs, and §264.602(c), which directs the OAG to develop a scale of state financial support for volunteer advocate programs. *See Acts 1997, 75th Leg., ch. 1294, section 7, eff. September 1, 1997. Section 264.609 of the Texas Family Code further provides that the OAG may adopt rules necessary to implement this Act.*

No other statute, article, or code is affected by these proposed new rules.

§64.1. Legal Authorization.

The provisions of this chapter are promulgated under the Texas Family Code, §§264.602(d), 264.602(c), and 264.609, which provide the Office of the Attorney General with the authority to adopt standards for local volunteer advocate programs, to develop a scale of financial support for the local volunteer advocate programs, and to adopt rules necessary to carry out the provisions of the Act.

§64.3. Applicability.

This chapter shall apply to local volunteer advocate programs and contracts for services with local volunteer advocate programs as specified in Texas Family Code, Chapter 264, Subchapter G.

§64.5. Definitions.

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

(1) Child -- An abused or neglected child who is under the control or supervision of the Texas Department of Protective and Regulatory Services and who is the subject of a suit affecting the parent-child relationship filed by a governmental entity;

(2) Court -- The district court, juvenile court having the same jurisdiction as a district court, or other court expressly given jurisdiction of a suit affecting the parent-child relationship.

(3) Local volunteer advocate program or "local program" -- A volunteer-based, nonprofit program that provides advocacy services to abused or neglected children with the goal of obtaining a permanent placement for a child that is in the child's best interest;

(4) Statewide organization -- The organization with which the Office of the Attorney General contracts under §264.603 of the Texas Family Code and which contracts with local programs to provide advocacy services to abused or neglected children and which oversees the performance of the local program;

(5) Central Registry -- A registry of confirmed cases of child abuse or neglect, as maintained by the Texas Department of Protective and Regulatory Services pursuant to §261.002 of the Texas Family Code and federal law.

§64.7. Purpose.

(a) The purpose of this chapter is to provide standards and procedures regarding the function and administration of local programs.

(b) This chapter also provides procedures and guidance in the application for, awarding of, and performance standards required for, contracts between the statewide organization and the local programs.

§64.9. Contracts With Local Programs.

(a) Eligibility Requirements for Local Programs.

(1) To be eligible for a contract with the statewide organization under Family Code §264.602, a local program must:

(A) use individuals appointed as volunteer advocates or guardians ad litem by the court to provide for the needs of abused or neglected children;

(B) demonstrate that it has provided court-appointed advocacy services for at least two years;

(C) provide court-appointed advocacy services for at least ten children each month; and

(D) demonstrate that it has local judicial support.

(2) Local judicial support may be demonstrated by a signed Judicial Endorsement form and an annual approval from the court, Child Protective Services and other affiliated agencies as deemed appropriate by the statewide organization.

(3) The statewide organization may not contract with a person who is not eligible under this section. However, the statewide organization may waive the requirement in subsection (a)(1)(C) for an established program in a rural area or under other special circumstances.

(b) Criteria for Award of Contracts. The statewide organization shall consider the following in awarding a contract to a local program:

(1) The local program's eligibility for, and use of, funds from local, state, or federal governmental sources, philanthropic organizations, and other sources;

(2) Community support for the local program as indicated by financial contributions from civic organizations, individuals, and other community resources;

(3) Whether the local program provides services that encourage the permanent placement of children through reunification with their families or timely placement with an adoptive family; and

(4) Whether the local program has the endorsement and cooperation of the local court system.

(c) Contract Requirements.

(1) A contract between the statewide organization and a local program shall require the local program to:

(A) Make quarterly and annual financial reports on a form provided by the Office of the Attorney General;

(B) Make quarterly and annual reports of performance factors as identified by the Office of the Attorney General and submit such reports to the statewide organization by the deadlines designated by the statewide organization;

(C) Obtain annual independent financial audits or audited financial statements as required by state or federal law and provide copies of the auditor's reports and related documents in the form and in accordance with the deadlines designated by the statewide organization;

(D) Cooperate with inspections and audits that the Office of the Attorney General makes to ensure service standards and fiscal responsibility; and

(E) Provide as a minimum:

(i) Independent and factual information in writing to the court and to counsel for the parties involved regarding the child;

(ii) Advocacy through the courts for permanent home placement and rehabilitation services for the child;

(iii) Monitoring of the child to ensure the safety of the child and to prevent unnecessary movement of the child to multiple temporary placements;

(iv) Reports in writing to the presiding judge and to counsel for the parties involved;

(v) Community education relating to child abuse and neglect;

(vi) Referral services to existing community services;

(vii) A volunteer recruitment and training program, including adequate screening procedures for volunteers;

(viii) Procedures to assure the confidentiality of records or information relating to the child; and

(ix) Compliance with the standards adopted under Family Code, Section 264.602.

(2) A contract between the statewide organization and a local program shall be enforced through the use of the remedies and in accordance with the procedures provided in the Uniform Grant and Contracts Management Standards. Contracts between the statewide organization and the local volunteer programs shall reference these remedies.

(3) A local program shall comply with the requirements and provisions of the contract between the statewide organization and the Office of the Attorney General.

§64.11. Scale of State Financial Support.

(a) The statewide organization shall contract for services with eligible local programs to expand the existing services of the local programs. Such contracts may not result in reducing the financial support which a local program receives from another source.

(b) Pursuant to Family Code §264.602(c), the annual percentage of state financial support for a local program shall decline each year over a six-year period as reflected in the schedule below. The reimbursement by the Office of the Attorney General of expenses for a particular local program incurred in any given year shall not exceed the following percentage of total support needs of the local program for that year, beginning on the effective date of the contract between the local program and the statewide organization.
Figure: 1 TAC §64.11(b)

§64.13. Operation of Local Program.

(a) Personnel.

(1) Volunteers.

(A) Volunteers must be a minimum of 18 years of age.

(B) A volunteer may serve as either:

(i) a guardian ad litem for abused and neglected children; or

(ii) an independent third party "friend of the court."

(C) Duties of volunteers may include, but are not limited to, reviewing applicable records, facilitating prompt and thorough review of the case, interviewing appropriate parties in order to make recommendations regarding the child's best interests, attending court hearings, and making written recommendations to the court concerning the outcome that would be in the child's best interest.

(D) Volunteers may not:

(i) take a child home for any period of time;

(ii) give therapeutic counseling;

(iii) make placement arrangements for a child;

(iv) give or lend money or expensive gifts to a child or family;

(v) take a child on an overnight outing; or

(vi) allow a child to come into contact with someone the volunteer knows or should know has a criminal history involving violence, child abuse, neglect, drugs, or a sex-related offense.

(E) Volunteers shall not be assigned to more than three cases simultaneously unless the assignment is approved by the local program's executive director and/or caseworker supervisor.

(F) A volunteer shall not provide foster care to a child in the managing conservatorship of the Texas Department of Protective and Regulatory Services ("TDPRS") unless the volunteer is related to the child. This prohibition does not apply to:

(i) volunteer with whom a child has been placed with TDPRS prior to June 30, 1999; or

(ii) a volunteer with whom a child has been placed by an agency or person other than TDPRS and the child is not in the managing conservatorship of the TDPRS.

(G) Volunteers may not be assigned to any case in which they are related to any parties.

(2) Employees.

(A) Employees must be a minimum of 18 years of age.

(B) If an employee also serves on the board of directors, he or she may not be a voting director.

(3) Board of Directors.

(A) The board of directors shall have at least nine members, with an executive committee composed of, at a minimum, the offices of president, vice president, secretary, and treasurer.

(B) The bylaws of the local program shall include a rotation of directors, as well as term limits for directors and executive committee officers. The program's bylaws must be reviewed annually.

(C) Directors must be at least of 18 years of age.

(D) At least one director from each local program should attend the annual training conference provided by the statewide organization or a national association. If no director can attend the annual training conference, at least one director must obtain and review materials therefrom.

(b) Training.

(1) A local program shall provide annual orientation for new directors and ongoing education for incumbent directors, including information on the dynamics of child abuse, family violence, and applicable statutes. All such training materials are subject to review and revision by the statewide organization.

(2) A local program shall plan and implement a training and development program for employees and volunteers and shall inform volunteers about the background and needs of children served by the local program. The training program must include information regarding the operation of the court and the child welfare system and the nature and effect of child abuse and neglect. The training program must consist of at least thirty (30) hours of pre-service training and twelve

(12) hours of in-service training per year. All such training materials are subject to review and revision by the statewide organization.

(3) The program shall provide cultural diversity training for volunteers, employees, and directors on an annual basis.

(c) Administrative Matters.

(1) A local program must:

(A) operate under the auspices of state or county government or shall be incorporated as part of a not-for-profit organization;

(B) have a maximum volunteer-to-supervisor ratio of 30:1; and

(C) have a mission and purpose statement approved by the statewide organization.

(2) A local program shall have in writing:

(A) Agency goals and objectives with an action plan or time line for meeting those goals and objectives;

(B) A method for evaluating the progress of accomplishing the local program goals and objectives;

(C) A funding plan based on the local program's goals and objectives;

(D) Personnel policies and procedures;

(E) Job descriptions for employees, directors and volunteers;

(F) Procedures for volunteer recruiting, screening, training and appointment to cases;

(G) Guidelines for support and supervision of volunteers;

(H) A grievance procedure;

(I) A media/crisis communication plan;

(J) A fidelity bond;

(K) Accounting procedures; and

(L) A weapons prohibition policy approved by the statewide organization.

(3) Local programs shall endeavor to provide equal employment opportunity regardless of race, color, religion, national origin, age, sex (including pregnancy), disability, or other status protected by law, and shall comply with all applicable laws and regulations regarding employment.

(4) A local program shall endeavor to be an inclusive organization whose employees, volunteers, and directors reflect the diversity of the children and community it serves in terms of gender, ethnicity, and cultural and socio-economic backgrounds.

(5) Neither the Office of the Attorney General nor the statewide organization will be liable for the actions of local program volunteers, directors or employees. Volunteers, directors and employees of local programs must abide by the Code of Ethics established herein and all other laws and regulations governing their conduct and activities.

(d) Application Process.

(1) Prospective volunteers and directors must complete a written application, personal interview(s), volunteer status acknowledgment forms, and consent and release forms for appropriate background investigations.

(2) Prospective employees must complete a written application, personal interview(s), employee handbook acknowledgment forms, and consent and release forms for appropriate background investigations.

(3) Background investigations include, but are not limited to, the procurement of relevant information, including criminal history, from references, courts, the Central Registry, law enforcement and other governmental agencies.

(A) If the candidate has lived in another state within the past five years, the local program shall conduct a criminal history investigation in that area.

(B) Criminal history (including guilty pleas, pleas of no contest, acceptance of deferred adjudication, and charges, whether pending or not, and regardless of whether an offense is classified as a felony or misdemeanor) involving violence, child abuse or neglect, or sex- or drug-related offenses of an individual or of someone with whom the individual resides or regularly comes into contact, as well as any criminal history involving offenses classified as felonies, will preclude an individual from serving as a volunteer and may preclude an individual from serving as an employee. Driving While Intoxicated convictions (including guilty pleas and pleas of no contest) or charges may disqualify individuals from positions involving driving.

(C) Positions involving driving will also require investigation of the individual's driving record and insurability, and documentation of a current license and satisfactory personal liability insurance.

(D) The refusal to execute consent and release forms relating to background investigations shall disqualify an individual from serving as a volunteer or a director and from being considered for employment.

(e) Code of Ethics.

(1) Volunteers, directors and employees of local programs must:

(A) Keep any information obtained about individuals served by the local program confidential; and

(B) Conduct all business in a professional manner without improper or unlawful consideration of race, religion, sex (including pregnancy), age, national origin, disability, or other legally protected characteristics;

(2) Volunteers, directors and employees of local programs must not allow, through action or inaction, a conflict of interest to arise. A conflict of interest includes any situation in which a person has a personal, business, or financial interest or relationship which:

(A) Renders the person unable or potentially unable to perform his or her duties and responsibilities in an efficient and impartial manner; or

(B) Permits a person to receive or potentially receive private gain or favor for himself or herself or others, or otherwise creates the appearance of impropriety.

(3) A local program shall not engage or retain volunteers, directors or employees who have abused or neglected any position of trust or violated the Code of Ethics.

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 August 7, 2000.

TRD-200005453

Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: September 17, 2000
For further information, please call A.G. Younger at (512) 463-2110.

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID FRAUD AND ABUSE PROGRAM INTEGRITY
SUBCHAPTER E. OPERATING AGENCY RESPONSIBILITIES

1 TAC §371.1002

The Texas Health and Human Services Commission (HHSC) proposes new section 371.1002 in chapter 371, concerning the minimum goal for the Texas Department of Human Services that specifies the percentage of the amount of benefits granted by the department in error under the food stamp program or the program of financial assistance under chapter 31, Human Resources Code. Section 531.050 of the Texas Government Code directs the Health and Human Services Commission to set the minimum collection goal for each year. New section 371.1002 sets out the minimum collection goals for state fiscal years 2000 and 2001.

Mr. Don Green, Chief Financial Officer, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications for the state or local governments as a result of administering or enforcing the section.

Mr. Green has also determined that for each year of the first five years that the section is in effect, the public benefit anticipated as a result of enforcing the section will be the determination of the minimum collection of overissuances in the Food Stamp and Temporary Assistance to Needy Families Programs that the Texas Department of Human Services will strive to collect. There will be no cost to small businesses or persons complying with the section as proposed. There will be no impact on local employment.

Comments may be submitted in writing to Sherry McCulley, Office of Investigations and Enforcement, Texas Health and Human Services Commission, P.O. Box 13247, Austin, Texas 78711, or e-mail at Sherry.McCulley@hhsc.state.tx.us. Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

The new rule is proposed under the Texas Government Code, Section 531.033, which authorizes the Commissioner of Health and Human Services to adopt rules necessary to carry out the Health and Human Services Commission's duties under Chapter 531.

The new rule implements Texas Government Code, §531.050.

§371.1002. Minimum Collection Goal.

(a) This rule sets the Texas Department of Human Services's minimum collection goal of the amount of benefits granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resources Code, for the 2000 and 2001 state fiscal years.

(b) The minimum collection goal for state fiscal year 2000 is twenty-five percent (25%) of the amount of benefits granted in error in both the food stamp and public assistance programs.

(c) The minimum collection goal for state fiscal year 2001 is thirty percent (30%) of the amount of benefits granted in error in both the food stamp and public assistance programs.

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 August 7, 2000.

TRD-200005434
Marina S. Henderson
Executive Deputy Commissioner
Texas Health and Human Services Commission
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 424-6576

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TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 35. BRUCELLOSIS

The Texas Animal Health Commission (commission) proposes amendments to Chapter 35 concerning the Eradication of Brucellosis and will amend Subchapter A, regarding Cattle, Subchapter B, regarding Swine and Subchapter C, regarding Goats. This proposal amends §§35.1-35.4 in Subchapter A, §35.42 in Subchapter B, and §35.60 and §35.61 in Subchapter C. A new §35.62 has also been added to Subchapter C.

This chapter is being amended for reasons provided below. Under §35.1 (22) the definition for herds is being amended to include cattle owned by a spouse. This is intended to clarify the existing requirement and insure that brucellosis is not contained in an existing herd owned by a spouse where there is a greater potential for commingling and exposure.

Under §35.1(38) the definition for spayed heifers is being amended to specifically reflect United States origin spayed heifers which is the current practice. The Commission is adding a provision for Mexican origin heifers, spayed prior to entry. These animals will be identified as defined in the definition and conform to federal requirements.

Under §35.2(a)(4), the rule is being clarified regarding the testing of blood. For all retest purposes, the blood will only be collected by accredited veterinarians that are approved by the Commission to perform brucellosis program duties, or by commission or APHIS personnel.

Under §35.2(l)(4) proposes that following the results of the initial herd test of the herd which contained the reactor(s) or the suspect(s), a regional epidemiologist may waive the requirement for vaccinating cattle over twelve months of age in infected herds. This changes the current requirement of eight months. This change reflects other changes in the rule related to calfhood vaccination age.

Under §35.2(d), under requirements for a herd test, the rule is being amended under Subparagraph (B) to clarify that all cattle

"that are parturient or post parturient" shall be tested. The reason for inserting this qualification is based on the fact that the characterization of the disease is based on "parturient" and is not based on age at the time of calving.

Under §35.3(d)(2), the rule is being amended to correct the incorrect acronym contained in the rules for Brucellosis Milk Surveillance Test (BMST). The rule currently states BRT but is being amended to state BMST.

Section 35.4(a), regarding requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas, is being amended under subparagraph (B) to provide that spayed heifers shall be identified by branding as specified in §35.1 of this title (relating to Definitions). This is to correlate with the addition of the brand requirement for spayed heifers coming from Mexico.

Also, under §35.4(a)(5) which provides for testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen, is being clarified regarding what is needed to release an animal from quarantine.

Under §35.4(7), the section is being amended to remove the language which provides that the responsibility for the costs of calfhood testing and retesting shall be borne by the owner. The change reflects the fact that the agency currently performs most of these tests and retests. The reason is, in order to insure timely and accurate testing, agency personnel normally perform this activity. The costs associated with calfhood vaccination shall continue to be borne by the animal owner.

The Commission is amending §35.4(b) regarding the requirements for cattle entering Texas from other states. The exception, under paragraph (1)(A), for the vaccination requirements, is that all female cattle entering for purposes of shows, fairs and exhibitions will be "returning to their original location." This is in order to insure that cattle entering for shows, fairs and exhibitions meet our entry requirements by insuring return to their original location. This type of animal provides a reduced animal health risk for this state.

Also, regarding §35.4(b)(2), the testing requirement is being amended to clarify that it applies to all non-quarantined cattle "that are parturient or post parturient" animals. The reason is based on the characterization of the disease which is based on "parturient" and is not based on age at the time of calving.

Under §35.4(b), the requirement is clarified to insure that "cattle not from class free states or areas, certified brucellosis free herds, or commuter herds" shall be "S" branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit. The reason for the clarification is to state the requirement which establishes an appropriate method of risk management associated with these types of potentially at risk cattle.

Under §35.4(c)(2), the testing requirement is being clarified as being applicable to all cattle changing ownership within Texas that are parturient or post parturient.

The rule is being amended at §35.42 in order to indemnify the owner of an animal involved in a brucellosis tested herd where final diagnosis of the animal will be based on tissues. Indemnity is authorized to the owner of livestock because serological samples indicate it is potentially exposed to or infected with brucellosis and the commission considers it necessary to buy the animal for final diagnosis. This is a necessary step toward eradication of the disease.

The Commission proposes changes to Subchapter C which provides for the eradication of brucellosis in goats. As with the brucellosis programs for cattle and cervidae, this program is focused on the control and eradication of brucellosis from livestock in Texas. Recently, *Brucella melitensis* was diagnosed in a goat herd in South Texas. This is the first such outbreak documented in goats in over thirty years. The Commission moved quickly to control and handle this outbreak. *Brucella melitensis* is a particularly serious disease in people and may infect them via consumption of unpasteurized goat milk or through contact during the slaughter process. In order to insure that this disease does not re-establish itself in goats in Texas, the rules are being amended to reflect the current standards for sheep and goats in the brucellosis program established with the cooperative efforts of the United States Department of Agriculture. This program will have the same testing requirements and protocol as provided for cervidae and swine.

Under §35.60, new definitions are being added which reflect the current brucellosis testing protocol for other species.

Section 35.61 is being amended to contain, "general requirements" for this subchapter and replaces the "Requirements for Certified Brucellosis Free Herd of Dairy Goats." (The requirements related to a certified brucellosis free herd are being put into a new §35.62.) This section contains requirements related to testing and classification requirements, including procedures for handling affected herds and indemnity options. The Section contains the following subsections: (a) Testing of blood; (b) Classification of goats; (c) Reclassification of reactors; (d) Requirements of a herd test; (e) Procedures in affected herds; and (f) Depopulation with indemnity.

Section 35.62 is a new section and is entitled "requirements for Certified Brucellosis Free Herd of Goats." This corresponds to requirements previously contained in §35.61 but with updated requirements which reflect the current brucellosis program. This section contains the following requirements or elements: (a) A certified brucellosis free goat agreement must be completed and signed with the Texas Animal Health Commission; (b) Brucellosis testing will be on a herd basis. Certified free herd status is for a 12-month period; (c) Goats required to be tested--all sexually intact goats are required to be tested at one year of age or older as evidenced by the eruption of their first pair of permanent incisor teeth; (d) Qualifying methods; (e) Qualifying standards; and (f) Proof of qualifying as a certified brucellosis free herd.

Mrs. Angela Lucas, Director of Financial Services, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The agency currently administers the program and the proposed changes will not create any additional costs to the agency to administer. The costs associated with the indemnity provisions related to swine and goats is expected to be within the budgetary considerations for such a program, especially since the provision related to swine is only for individual animals, and the incidence of brucellosis in goats is rare.

Mrs. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations by conforming to current federal requirements.

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

SUBCHAPTER A. ERADICATION OF BRUCELLOSIS IN CATTLE

4 TAC §§35.1 - 35.4

The amendments are proposed under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in Section 163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

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

§35.1. Definitions.

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

(1) Adjacent herds--A herd of cattle or bison that occupies a premise that lies within one mile of a "herd known to be affected."

(2) Affected herd--Any herd in which any cattle have been classified as a reactor or suspect and which has not completed the requirements of the individual herd plan.

(3) Approved brucella vaccine--A product that is produced under license of the USDA and used in accordance with the current guidelines of USDA for its use in cattle to enhance their resistance to brucellosis.

(4) Approved personnel--Texas Animal Health Commission inspectors and veterinarians; Federal Animal Health technicians and veterinarians; accredited Texas veterinarians; and others who have been approved to do those assigned duties as described in these regulations for brucellosis control and eradication.

(5) Auction--A public sale of cattle.

(6) Auctioneer--A person who sells or makes a business of selling cattle at auction.

(7) Brucellosis (Bang's Disease contagious abortion)--For purposes of this regulation, brucellosis is a contagious, infectious disease of cattle, sheep, goats, horses, and swine caused by bacteria of the genus brucella.

(8) Cattle--All dairy and beef animals (genus Bos) and bison (genus Bison).

(9) Class "Free" area--An area of two or more contiguous counties which has remained free from field strain brucella abortus infection for 12 months or longer. A 12 months adjusted MCI reactor prevalence rate not to exceed one reactor per 2,000 cattle tested (0.050%) must be maintained.

(10) Class "A" area--An area of two or more contiguous counties which has an accumulated 12 months herd infection rate due to field strain brucella abortus that does not exceed 0.25% or 2.5 herds per 1,000 and must maintain a 12 months adjusted MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.100%).

(11) Class "B" area--An area of two or more contiguous counties which has an accumulated 12 months herd infection rate due to field strain brucella abortus that does not exceed 1.5% or 15 herds per 1,000. A 12 months adjusted MCI reactor prevalence rate not to exceed three reactors per 1,000 cattle tested (0.30%) must be maintained.

(12) Commission--The Texas Animal Health Commission.

(13) Commission firm--A person, partnership, other legal entity, or corporation which buys and sells cattle as a third party and who reports to the seller and to the buyer details of the transactions. This includes any such person or group whether or not a fee is charged for the service.

(14) Commuter herd--A herd of cattle located in two or more states that is documented as a valid ranching operation by those states in which the herd is located and which requires movement of cattle interstate from a farm of origin or returned interstate to a farm of origin in the course of normal ranching operations, without change of ownership, directly to or from another premise owned, leased, or rented by the same individual. An application for "commuter herd" status must be signed by the owner and approved by the states in which the herd is located. This status will continue until canceled by the owner or one of the signatory states.

(15) Dealer--

(A) Any person engaged in the business of buying or selling cattle in commerce on his own account, as an employee or agent of the vendor, the purchaser, or both, or on a commission basis.

(B) The term shall not include a person who buys or sells cattle as part of his own bona fide breeding, feeding, dairy, or stocker operations but does include livestock markets and commission merchants.

(16) Designated Pens--A set of pens in a feedlot under a plan of restricted movement, approved jointly by Animal and Plant Health Inspection Service, Veterinary Services, and the Commission in which all cattle are classified as exposed to brucellosis. The pens may

be pre-approved, but the approval period will begin with initial arrival of the exposed cattle. The Designation will be automatically renewed every 12 months if requirements specified in these regulations and the approved agreement continue to be met by the feedlot. The status will continue until:

(A) the feedlot requests deactivation; or

(B) the Commission determines the status should be eliminated because of the feedlot's failure to comply with the Designation Agreement or these regulations; or

(C) changes in Federal or State law or regulations require elimination of or change in the status.

(17) Epidemiologist--A veterinarian who has received a degree in epidemiology and is employed by the commission or USDA, APHIS, VS.

(18) Executive director--The chief executive officer of the Texas Animal Health Commission appointed by the commissioners and authorized to act for the commissioners in the absence of the chairman.

(19) Exempt Cattle (from testing requirements)--Cattle that have been physically rendered sterile for breeding.

(20) Exposed cattle--Cattle that are part of an affected herd or cattle that have been in contact with reactors in marketing channels for periods of 24 hours; and periods of less than 24 hours if the reactor has recently aborted, calved, or has a vaginal or uterine discharge. These cattle shall be classified as exposed regardless of any blood test results.

(21) Feedlot--A confined drylot area for finish feeding of cattle on concentrated feed with no facilities for pasturing or grazing. All cattle in a feedlot are considered a "herd" for purposes of these regulations.

(22) Herd--

(A) All cattle under common ownership or supervision or cattle owned by a spouse that are on one premise; or

(B) All cattle under common ownership or supervision or cattle owned by a spouse on two or more premises that are geographically separated, but on which the cattle have been interchanged or where there has been contact among the cattle on the different premises. Contact between cattle on the different premises will be assumed unless the owner establishes otherwise and the results of the epidemiological investigation are consistent with the lack of contact between premises; or

(C) All cattle on common premises, such as community pastures or grazing association units, but owned by different persons. Other cattle owned by the persons involved which are located on other premises are considered to be part of this herd unless the epidemiological investigation establishes that cattle from the affected herd have not had the opportunity for direct or indirect contact with cattle from that specific premises. Quarantined feedlots and quarantined pastures are not considered to be herds.

(23) High risk herd--A herd that is epidemiologically judged by a state-federal veterinarian to have a high probability of having or developing brucellosis. A high risk herd need not be located on the same premise as an infected or adjacent herd.

(24) Hold Order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(25) Individual herd plan--A herd disease management and testing plan to prevent, control, and eliminate brucellosis in a herd of cattle.

(26) Market cattle identification--The process of individually identifying cattle on change of ownership by backtag or eartag issued by USDA showing their herd of origin.

(27) Official backtag--A United States Department of Agriculture (USDA), Animal and Plant Health Inspection Service (APHIS), Veterinary Services (VS) approved identification backtag that conforms to the national uniform tagging system. It uniquely identifies each individual animal with alpha-numeric identification. The official backtag may not be reused on another animal.

(28) Official eartag--A Veterinary Services approved identification eartag (metal, plastic, or other) that conforms to the nine-character alpha-numeric National Uniform Eartagging System. It uniquely identifies each individual animal with no duplication of the alpha-numeric identification, regardless of the materials or colors used. The term includes the special orange-colored eartag series used to identify calfhood vaccinates. The official eartag may not be removed from the animal.

(29) Official Vaccinate--

(A) Calfhood Vaccinate: Female cattle (dairy and beef) vaccinated between four and 12 months of age with an approved Brucella vaccine.

(B) Adult Vaccinate: Female cattle that have been blood tested negative within ten days prior to vaccination and vaccinated at an age over the ages given in subparagraph (A) of this paragraph with an approved dose of Brucella vaccine as part of a whole herd vaccination plan.

(30) Parturient--Visibly prepared to give birth or within two weeks of giving birth.

(31) Permit--A document adopted by the commission with specified conditions relative to movement, testing and vaccinating of cattle which is required to accompany the cattle entering, leaving or moving within the State of Texas.

(A) "E" permit--Premovement authorization for entry of cattle into the state by the Texas Animal Health Commission. The "E" permit states the conditions under which movement may be made, and restrictions and test requirements after arrival.

(B) "S" permit--A premovement authorization for exposed, suspect or nontested cattle in marketing channels having restricted destination.

(C) "B" permit (VS Form 1-27)--A premovement authorization for movement of reactor cattle in marketing channels moving to slaughter.

(32) Postparturient--Having already given birth.

(33) Premise--An area defined by the outermost boundary of land under common ownership or control enclosed by a perimeter fence or other boundary. A premise may consist of more than one pasture.

(34) Priority Herd--Exposed herd from which a reactor has been classified, infected herd, or adjacent herd.

(35) Quarantined feedlot--A feedlot under a plan of restricted movement, approved jointly by Animal and Plant Health Inspection Service, Veterinary Services and the commission in which all cattle except steers and spayed heifers are classified as exposed to brucellosis.

(36) Quarantined pasture--A designated confined area for limited grazing under a plan of restricted movement approved jointly by Animal and Plant Health Inspection Service, Veterinary Services and the commission. All cattle except steers and spayed heifers shall be classified as exposed to brucellosis. All cattle permitted to a quarantined pasture must originate from a Texas farm or ranch and move directly to a quarantined pasture or through a Texas market to a quarantined pasture.

(37) Reactor--Cattle classified as being infected with brucellosis as a result of serological testing or microbiological culturing of blood, tissue, secretions, or excretions from the animal.

(38) Spayed Heifer--A United States origin heifer which has been neutered by an accredited veterinarian and identified with an official eartag and hot iron brand applied high on the left hip near the tailhead with an open spade design not less than three inches high. The heifer shall be identified on a TAHC Spaying Certificate form completed by an accredited veterinarian or a Texas Animal Health Commission representative. Each spayed heifer imported into the United States from Mexico shall be identified with a distinct, permanent, and legible "MX" mark applied with a freeze brand, hot iron, or other method prior to arrival at a port of entry, unless the spayed heifer is imported for slaughter. The "MX" mark shall be not less than 2 inches nor more than 3 inches high, and shall be applied to each animal's right hip, high on the tailhead (over the junction of the sacral and first coccyges.
Figure: 4 TAC §35.1(38) (No change.)

(39) Suspect--Cattle classified as suspicious of being infected with brucellosis as a result of serological testing of blood, secretions, or excretions from the animal.

(40) Tested herd--Herd of cattle located in a noncertified area for which a state has records showing that the herd has been subjected to official testing for brucellosis in accordance with the procedures for herd tests within 12 months prior to movement and that the herd is not known to be affected with brucellosis.

(41) Test-Eligible Cattle in other than Priority Herds--All cattle 18 months of age and over (as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers.

(42) Test-Eligible Cattle in Priority Herds--All sexually intact female cattle four months of age and older and all bulls 18 months of age and older.

(43) Traceback of reactors--The epidemiological procedure in locating the premise or premises and the cattle that have been in contact with the reactor during a specified period of time.

§35.2. General Requirements.

(a) Testing of blood and semen.

(1) All tests shall be made by approved personnel only as the basis for compliance with these regulations.

(2) All tests must be confirmed by a state-federal laboratory as the basis for compliance with these regulations. Non-quarantined cattle may be moved based upon the card test results. All samples initially tested at other than state-federal laboratories shall be submitted (mailed) within 48 hours of collection and confirmed at the state-federal laboratory.

(3) When a discrepancy occurs between test results of the state-federal laboratory and those of the person who originally tested the animal(s), the entire consignment, shipment, or herd will be traced and held pending results of a retest on the animal(s) with the discrepancy.

(4) Samples for all retest purposes will be collected by accredited veterinarians that are approved by the Commission to perform brucellosis program duties, or by commission or APHIS personnel and submitted to the state-federal laboratory for confirmation testing. An epidemiologist may designate those cattle that do not require a test. The herd of origin, as well as the herd in which the animal(s) is presently located, will be affected by the test results of the state-federal laboratory. The state-federal laboratory initial test results will prevail if the traced animal cannot be positively identified or if it has been slaughtered and cannot be retested.

(5) When the state-federal laboratory is unable to confirm results of a test because of insufficient serum, hemolyzed blood, or broken tubes, the commission may require a trace and retest of the animals not confirmed.

(6) When the commission has reason to believe the tests are controversial, contested, or disputed, it may require that its personnel be present at the time of blood collection and testing as a basis for compliance with these regulations. In such case, the commission shall notify the herd owner prior to the test.

(b) Classification of cattle. Cattle shall be classified by approved personnel by an evaluation of titer responses for all cattle to serological tests, or by identification of Brucella abortus in specimens taken from these cattle. The following serological tests may be used for the classification of cattle.

(1) Card test. The card test (buffered Brucella is a test antigen) that may be used to classify cattle as suspects. Results of the card test may be used with other test results conducted in the state-federal laboratory to aid in the classification of cattle as reactors. The card test may be used as a test to classify cattle as reactors on written approval of the owner or his agent. The owner or his agent's signature on test charts prior to "B" branding will be accepted as approval. Card tests may be used to classify cattle negative on surveillance samples collected at slaughter, on routine samples collected on farms, at livestock markets, and on tests of suspicious and affected herds.

(2) Manual Complement fixation test. The manual complement fixation test is an official test when it is conducted at the cooperative state-federal brucellosis laboratory using recognized methods.

(A) Interpretation of the manual CF test results.
Figure: 4 TAC §35.2(b)(2)(A) (No change.)

(B) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results:
Figure: 4 TAC §35.2(b)(2)(B) (No change.)

(3) Rivanol test. The rivanol test is an official test when conducted in cooperative state-federal brucellosis laboratories. Vaccinated cattle tested under the MCI program that show complete agglutination at dilutions of 1:25 or greater must be reported as MCI reactors for the purpose of state or area classification.

(A) Interpretation of rivanol test results.
Figure: 4 TAC §35.2(b)(3)(A) (No change.)

(B) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results:
Figure: 4 TAC §35.2(b)(3)(B) (No change.)

(4) Brucellosis Milk Surveillance Test (BMST). The brucellosis milk surveillance test, conducted by methods approved by USDA-APHIS-VS, is a test that may be used to classify herds or cattle as suspected of being infected with brucellosis.

(5) Buffered acidified plate antigen test. Buffered acidified plate antigen tests may be used to classify cattle as negative on MCI samples collected at slaughter and at livestock markets. This test may also be used in state-federal laboratories for routine samples collected on farms.

(6) Rapid screening test (RST). The RST may be used as a test for classifying cattle as negative in state-federal laboratories.

(7) Standard tube agglutination test (STT) or standard plate agglutination test (SPT). The blood or semen titers of cattle and bison tested by the STT or SPT methods are interpreted in the following ways: Figure: 4 TAC §35.2(b)(7) (No change.)

(8) Particle concentration fluorescence immunoassay (PCFIA) test. May be used to determine the brucellosis disease status of test-eligible cattle and bison when conducted by methods approved by USDA, APHIS, VS. When used as a supplemental test on card-positive Strain 19 vaccinated dairy cattle, a negative PCFIA result will allow them to be classified as negative for intrastate movement only.

(9) Concentration immunoassay test (CITE). Used as a supplemental test in market channels where cattle have been disclosed as positive by use of the card test. CITE positive animals will be considered as reactors and the remainder of the consignment be considered as exposed and moved in accordance with subsection (i)(2) of this section.

(10) New tests under research. Laboratory tests approved by the executive director are authorized to be used in conjunction with tests listed in this subsection for evaluation of their future usefulness in the program.

(c) Reclassification of reactors. Cattle initially classified reactors may be reclassified provided a complete epidemiological investigation of the herd is conducted and there is no evidence of field strain Brucella abortus infection or exposure thereto.

(d) Requirements for a herd test.

(1) Test eligibility.

(A) Priority herds--All sexually intact female cattle four months of age and older and all bulls 18 months of age and older.

(B) Other than priority herds--All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers.

(2) Calfhood vaccination requirements. All female cattle between four and 12 months of age in affected herds must be vaccinated at the time of testing.

(3) Identification requirements. All cattle tested shall be identified with either an official eartag, an individual registration tattoo, or individual registration brand. All cattle in priority herds except steers, spayed heifers, and bulls under 18 months must be officially identified regardless of test eligibility.

(e) Requirements of a market test.

(1) All cattle 18 months of age and over except steers and spayed heifers shall be tested unless they were tested within the previous 30 days and:

(A) are accompanied by a test document approved by the commission; and

(B) identified with official eartag; and

(C) either identified with legible individual brand, bangle tag, chalk number, or backtag with this identification shown on a test document; or each animal examined so that the eartag can be matched to the test document.

(2) Each animal(s) tested at the market shall be identified by official eartag and official backtag.

(3) The market shall supply the following information to the accredited veterinarian prior to conducting the card test for inclusion on the VS Form 4-54 after results of the test are known:

(A) full name, street address and/or route address, and zip code of the owner of the cattle at the time cattle are delivered to the market;

(B) backtag number, with prefix, for each head of cattle.

(4) The veterinarian shall not conduct the card test prior to receiving the name and address of the owner from the market.

(5) At time of testing of the cattle, the following additional information is required to be included on the VS Form 4-54.

(A) eartag number (list all nine characters);

(B) date of test;

(C) full name and address of the market;

(D) tester's card test permit number; and

(E) signature of the person who tested the cattle.

(6) The veterinarian interpreting the card test results shall, at the time of testing, immediately report any and all positive test results to the state-federal market inspector by means of the completed VS Form 4-54.

(7) Cattle which show a positive reaction to the card test shall have another blood sample collected from them by an inspector. The inspector will conduct another card test and the CITE test or deliver the sample to a laboratory for a PCFIA test. If negative to the CITE or PCFIA tests, Strain 19 vaccinated dairy cattle shall be classified negative for intrastate movement only and marked on the hip with yellow paint. If negative to the CITE or PCFIA tests, beef cattle and non-Strain 19 vaccinated dairy cattle shall be classified as suspect(s) and may be permitted to return to the premises of origin under hold order for retest or be "S"-branded and permitted to slaughter or to a quarantined feedlot or designated pen. In either case, the remainder of the consignment may move unrestricted. Samples tested with the CITE test shall then be submitted to a state/federal laboratory in a vacutainer for supplemental testing and accompanied by a completed Form 91-28 which lists only the card positive cattle.

(f) Requirements of a slaughter test. Slaughter plants operating in Texas shall collect blood from all cattle 18 months of age and over except steers and spayed heifers and finish fed cattle under 36 months of age. All blood samples collected at slaughter shall be submitted to a state-federal laboratory. Identification of the cattle in relation to the sample shall be maintained so that reactors or suspects may be traced to their herd of origin. The following collection procedures shall be followed:

(1) Blood samples shall be collected from each animal in tubes numbered in sequence for each day's kill and placed in innercell mailing cartons furnished by USDA.

(2) The samples shall be listed in numerical order on the USDA Test Record, Market Cattle Testing Program Form (VS 4-54). All man-made identification devices such as backtags, eartags, and bangle tags for each animal shall be recorded on the VS 4-54 in the appropriate columns to the corresponding blood sample.

(3) Known brucellosis reactors shall be identified on the VS 4-54 by entering "FR" in the test interpretation column.

(4) The full name and address of each person or firm from which each animal was secured shall be recorded on the VS 4-54 and daily kill sheets. Test records shall show the slaughter plant name and address, the date of collection (kill date), and the signature of collector.

(5) The blood samples with the complete VS 4-54 and daily kill sheets shall be promptly submitted to the appropriate state-federal laboratory.

(6) If cattle are delivered by someone other than the slaughterer or the slaughterer's agent, the license plate number of the vehicle delivering the cattle shall be recorded on slaughter records and made available to commission personnel upon request.

(g) Retest of reactors. Reactors in markets or initial tests on farms and ranches will be retested at the owner or his agent's request; provided this request is within five days of his notification of the original blood test results and prior to identification of the reactors by "B" brand and eartag. Retest of reactors will be accomplished within five days of approval for retest in dairies and 10 days of approval for retest in beef herds. Reactor animals will be isolated from other cattle while awaiting retest. Animals classified as reactors on the retest will be branded within 48 hours of classification. Retesting of reactors on subsequent tests of the herd will be as provided for in the herd plan.

(h) Identification of brucellosis affected cattle.

(1) Reactor cattle. All reactor cattle shall be permanently identified within 15 days of classification by hot iron branding with the letter "B" (at least two by two inches), placed high on the left hip near the tailhead. An approved reactor tag shall be placed in the left ear. Identification shall be prior to movement.

(2) Exposed Cattle. All exposed cattle moving to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter shall be identified by branding with a hot iron the letter "S" (at least two by two inches) placed high on the left hip near the tailhead. Identification shall be prior to movement, except exposed cattle on the premise of origin may be "S" permitted to a livestock market where they shall be identified by "S" brand upon arrival. Exposed cattle returned from the livestock market to the herd of origin are exempt from such identification.

(3) Suspects. Cattle classified as suspects in markets will be identified as exposed cattle.

(i) Movement of cattle classified as reactors, exposed or suspects. There shall be no diversion from the permitted destination. When moved, the cattle must be maintained separate and apart from all other classes of livestock in pens reserved for this purpose at livestock markets or trucking facilities. These pens must be thoroughly cleaned and disinfected before reuse.

(1) Reactors. Reactors shall remain on the premises where disclosed until a "B" permit for movement to immediate slaughter has been obtained. Movement for immediate slaughter must be to a slaughtering establishment where federal or state meat inspection is maintained or to a livestock market for sale to such slaughtering establishment.

(2) Exposed cattle. All exposed cattle moving from a premise of origin or from a livestock market to a quarantined pasture, designated pen, quarantined feedlot, or to immediate slaughter shall remain on the premise where disclosed until an "S" permit VS Form 1-27 for movement has been prepared by a TAHC Representative and signed by the person or other legal entity moving the cattle. The completed "S" permit shall accompany the shipment of cattle to the permitted destination. Movement for immediate slaughter must be to a slaughtering establishment where Federal or State meat inspection is maintained or to a livestock market for sale to such slaughtering facility.

(3) Suspects. Suspects will be moved the same as exposed cattle, except at a livestock market in a consignment of otherwise negative cattle from a producer's herd of origin where the suspect is card positive on the presumptive test and negative to supplemental tests, cattle may move as follows:

(A) For beef cattle and non-Strain 19 vaccinated dairy cattle, the owner shall either:

(i) return the suspect under hold order to the herd of origin until:

(I) the suspect is negative to the card test, in which case the hold order will be released; or

(II) the suspect is classified as a reactor, in which case it must be disposed of as described in subsection (j) of this section; or

(ii) sell the suspect to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter, identified with an "S" brand and a 1-27 permit.

(B) For Strain 19 vaccinate beef cattle, the owner shall either:

(i) return the suspect under hold order to the herd of origin until:

(I) the suspect is negative to the card test, in which case the hold order will be released; or

(II) the suspect is declared a stabilized suspect by an epidemiologist after subsequent testing conducted in not less than 30 days after the positive card test was conducted; or

(III) the suspect is classified as a reactor, in which case it must be disposed of as described in subsection (j) of this section; or

(ii) sell the suspect to a quarantined feedlot, designated pen, quarantined pasture, or to slaughter, identified with an "S" brand and a 1-27 permit.

(j) Immediate slaughter of reactors. Reactor cattle shall be sold for immediate slaughter and removed from the premise under "B" permit within 15 days from the date of identification for beef cattle and within seven days from the date of identification for dairy cattle. Movement for immediate slaughter shall be to a slaughtering establishment where Federal or State inspection is maintained or to a livestock market for sale to such a slaughtering establishment. When it has been determined by the Executive Director that a specific reactor or reactors present a significant risk of spread of brucellosis, those specific animals must move direct to slaughter and may not be moved to a livestock market.

(k) Removal of heifer calves from quarantined herds. Heifers born in an infected herd shall be removed from the herd immediately after they are weaned and kept as a separate heifer herd under quarantine, or moved to market with "S" permit to be "S" branded, or "S" branded and permitted prior to movement to a quarantined pasture, designated pen, quarantined feedlot, or slaughter.

(l) Requirements following classification of a dairy or a beef animal or a bison as a reactor or a suspect.

(1) The herd of which the reactor or the suspect was a part shall be placed under quarantine or hold order. When brucellosis infection is diagnosed in a herd, a quarantine will be placed on the herd. Any herd with fence line or across the road contact with the quarantined herd will be evaluated by a USDA or TAHC epidemiologist who will determine whether the herd should be placed under hold order. Other adjacent or high risk herds may be placed under hold order.

(2) All cattle in the herd except steers and spayed heifers are included in the quarantine or hold order. Any movement of quarantined cattle shall conform to subsections (h) and (i) of this section concerning identification and movement of reactor, exposed, or suspect cattle. Release of the quarantine will be as described in paragraph (7) of this subsection.

(3) An initial test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be conducted in accordance with subsection (d) of this section within a specified time set by state-federal personnel upon consultation with each herd owner unless waived by epidemiologist. If the Executive Director determines, based on epidemiological principles, that immediate action is necessary, the time for testing may be set without consultation with the herd owner.

(4) The results of the initial herd test of the herd which contained the reactor(s) or the suspect(s) and/or any other affected, adjacent or high risk herds will be used to determine the need for, and development of an individual herd plan for prevention or elimination of brucellosis in that herd. The plan shall be developed by a State-Federal veterinarian of the brucellosis control program in consultation with the herd owner or caretaker and his veterinarian (if so requested by the owner). The plan developed by the Commission shall be final and the owner or caretaker will be provided a copy. Any proposed herd plan which has identified special management requirements will be reviewed by a State-Federal epidemiologist who will either support or modify the plan. A regional epidemiologist may waive vaccinating cattle over twelve [~~eight~~] months of age in infected herds. The terms and conditions of a herd plan may be amended in writing by the Commission upon good cause.

(5) The plan will consist of the following.

(A) Testing Procedures.

(i) All sexually intact female cattle four months of age and older and all bulls 18 months of age and older in the herd shall be presented for testing or retesting at intervals stated in the herd plan until the quarantine is released.

(ii) All cattle to be added to the herd shall be tested prior to commingling with the herd.

(iii) All stray cattle found in the herd shall be presented for testing.

(iv) Cattle identified as reactors shall be removed in accordance with subsection (j) of this section.

(v) Heifers born in the herd shall be removed in accordance with subsection (k) of this section.

(B) Vaccination Procedures.

(i) All nonvaccinated heifers shall be presented as soon as possible after they reach the age of four months and before the age of 12 months to be tested for brucellosis and vaccinated with an approved B. abortus vaccine. In the event heifers tested at the time of vaccination disclose reactor level titers, they will be classified and handled as reactors.

(ii) All female cattle over 12 months of age shall be presented to be adult vaccinated with an approved B. abortus vaccine within ten days of their negative serological test.

(iii) Replacement female cattle over 12 months of age shall be presented within ten days after a negative test, to be adult vaccinated prior to their addition to an already vaccinated herd. The epidemiologist will determine if adult vaccination of replacements must continue if the quarantine extends past 18 months, or if only calfhood vaccinates may be added.

(iv) Previously vaccinated negative female cattle shall be presented for revaccination with an approved B. abortus vaccine as determined by the epidemiologist.

(6) A person may protest an initial test or a herd plan for the prevention or elimination of brucellosis in each herd classified as affected, adjacent, or high risk due to a reactor or suspect animal, after consultation with the state-federal veterinarian of the Brucellosis Control Program.

(A) To protest, the herd owner must request a meeting, in writing, with the executive director of the commission within 15 days of receipt of the herd plan or notice of an initial test and set forth a short, plain statement of the issues that shall be the subject of the protest, after which:

(i) the meeting will be set by the executive director no later than 21 days from receipt of the request for a meeting;

(ii) the meeting or meetings shall be held in Austin; and

(iii) the executive director shall render his decision in writing within 14 days from date of the meeting.

(B) Upon receipt of a decision or order by the executive director which the herd owner wishes to appeal, the herd owner may file an appeal within 15 days in writing with the chairman of the commission and set forth a short, plain statement of the issues that shall be the subject of the appeal.

(C) The subsequent hearing will be conducted pursuant to the provisions of the Administrative Procedure and Texas Register Act, and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(D) If the executive director determines, based on epidemiological principles, that immediate action is necessary, the executive director may shorten the time limits, as set out in subparagraphs (A) and (B) of this paragraph, to not less than five days. The herd owner must be provided with written notice of any time limits so shortened.

(7) Requirements for Quarantine Release.

(A) A herd is eligible for quarantine release following a minimum of three consecutive herd blood tests that are classified as negative. The first negative test shall be conducted at least 30 days after the last reactor is removed from the herd. The second negative test shall be conducted at least 120 days after the last reactor is removed from the herd. The third negative test shall be conducted a minimum of 12 months after the last reactor is removed from the herd.

(B) Heifers born in the herd and were removed from the herd and kept separately shall remain under quarantine until they test negative 30 days following calving.

(C) On the releasing test, official vaccinates that demonstrate suspect titers on the approved supplemental test shall be classified as suspects. After Strain 19 vaccinated suspects are

stabilized, the remainder of the herd may be released from quarantine. These suspects shall remain under a hold order.

(D) To obtain a quarantine release, the owner/caretaker shall retest all cattle 18 months of age and over except steers and spayed heifers in units not under quarantine. The retest must be conducted not less than six months after the removal of the last reactor from the quarantined unit. This retest, together with the third negative test of the quarantined unit, may be used for herd certification if conducted no more than 14 months following a negative herd test after the removal of the last reactor. A designated brucellosis epidemiologist may exempt units from these retest requirements.

(E) Epidemiological data may be considered in the release of the quarantine.

(m) Official vaccination requirements.

(1) All official vaccinations will be conducted by approved personnel only.

(2) Calfhood vaccinated animals shall be permanently identified. If the animal is already identified with an official eartag before vaccination, an additional official eartag is not required. Vaccination tattoos must be applied to the right ear. For Brucella abortus Strain 19 vaccinates, the tattoo will include the U.S. Registered Shield and "V" which will be preceded by a number indicating the quarter of the year and followed by a number corresponding to the last digit of the year in which the vaccination was done. For Brucella abortus Strain RB 51 vaccinates, the tattoo will include the U.S. Registered Shield and "V," which will be preceded by a letter "R" and followed by a number corresponding to the last digit of the year in which the vaccination was done. Official vaccination (orange) eartags must be applied to the right ear unless the animal is already identified with an official eartag. If the cattle or bison are registered by a breed association recognized by VS, individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags.

(3) Adult vaccinated cattle that have been vaccinated over calfhood age as part of authorized whole-herd vaccination plans shall be permanently identified as vaccinates by the following procedures: tattoo or by hot "V" brand and by official eartag. Adult-vaccinated cattle and/or bison in these herds must be identified by either a "V" hot brand high on the hip near the tailhead with the open end down for RB 51, open end up for Strain 19, or by an official "AV" (adult vaccination) tattoo in the right ear. For Brucella abortus Strain 19 vaccinated animals, the "AV" in the tattoo is to be preceded by a number indicating the quarter of the year, and followed by a number corresponding to the last digit of the year in which the vaccination was done. For brucella abortus Strain RB 51 vaccinated animals, the "AV" in the tattoo is to be preceded by the letter "R," and followed by a number corresponding to the last digit of the year in which the vaccination was done. The brand or tattoo is in addition to the official eartag identification. If the cattle or bison are registered by a breed association recognized by VS, individual animal registration tattoos or individual animal registration brands may be used for identifying animals in place of official eartags. Official eartags, if required, will be placed in the right ear.

(4) Vaccination will be done by state/federal personnel following a negative test within ten days prior to adult vaccination.

(n) Community notification of infected herds.

(1) The status of infected herds and the application of quarantined feedlots, designated pens, and quarantined pastures are to be made known to herd owners in the immediate community. Notification of such herd owners may be achieved by means of an educational letter delivered through personal contact or by mail. When the herd has completed its individual herd plan, or the Quarantined Premise approval is terminated, the herd owners shall also be notified within 30 days by means of an educational letter delivered by personal contact or by mail.

(2) Notification to the Texas Department of Health. The Texas Department of Health will be notified within 15 days of the classification of an infected herd.

(o) Requirements for a quarantined feedlot. All parturient and post parturient cattle must be officially tested for brucellosis within 30 days prior to entry into a quarantined feedlot. All cattle except steers and spayed heifers in a quarantined feedlot shall be classified as exposed to brucellosis. The quarantined feedlot shall be maintained for finish feeding of cattle in drylot with no provisions for pasturing or grazing except in adjacent quarantined pastures. Negative exposed and untested test-eligible cattle must be permanently identified with a hot iron "S" brand high on the tailhead upon entering the quarantined feedlot. All cattle except steers and spayed heifers located in feedlots adjacent to quarantined pastures must be permanently identified with a hot iron "S" brand high on the tailhead upon entering such feedlots. All cattle except steers and spayed heifers leaving such feedlot must go directly to slaughter; or may be moved directly to another quarantined feedlot or designated pen with an "S" permit.

(p) Requirements of a quarantined pasture for "S"-branded heifers. The Commission in conjunction with the United States Department of Agriculture (USDA), Animal and Plant Health Inspection Services (APHIS), Veterinary Services (VS) may issue an approval to a landowner or operator to operate a quarantined pasture for a period not to exceed eight months, which approval is personal to the person named, and nontransferable to any other premises from the premises described in the approval. To be considered, an applicant must submit a completed application in writing to the Texas Animal Health Commission. Hereafter, the word "operator" is used to indicate the person who received the approval to operate a quarantined pasture.

(1) The commission or USDA, APHIS, VS personnel shall make an on-site inspection of the premises prior to granting approval of the quarantined pasture to identify persons who own or control land having fence-line contact with the proposed quarantined pasture. Persons identified as owning or controlling land with fence-line contact shall be notified by the commission through certified mail of the pending application, and shall have the right to protest its approval under Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(A) Following notification of an application for a quarantined pasture for heifers, a person or persons owning or having control of land in fence-line contact with the proposed pasture may within 15 days of receipt of notification protest the application and request a meeting with the executive director of the commission in writing, stating the grounds for his protest, which grounds may include, but are not limited to, the following:

(i) probability of disease transmission; or

(ii) condition of fences.

(B) After expiration of the period within which the persons owning or having control of land in fence-line contact with the proposed pasture may submit their protests, the executive director shall inform the protester(s) and the applicant of a meeting date, which meeting shall take place in Austin. The applicant shall furthermore be informed of the grounds stated in the protest(s).

(C) At the meeting, the protester(s) and the applicant shall have the right to adduce any evidence in support of their stated position.

(D) Within 14 days following the meeting, the executive director shall render his decision in writing and inform the protester(s) and the applicant of his decision by certified mail.

(E) Upon receipt of an adverse decision or order, the protester(s) or the applicant may within 15 days of such receipt file a written notice of appeal with the chairman of the commission stating the grounds for such appeal. The subsequent administrative hearing on the appeal shall be held before the commission in Austin, which hearing it may delegate to a hearing examiner. Such hearing shall be conducted in conformity with the Administrative Procedure and Texas Register Act and Chapter 32 of this title (relating to Hearing and Appeal Procedures).

(2) The approval to operate a quarantined pasture shall automatically expire eight months from the date of approval.

(3) The operator may only admit "S" branded Texas heifers, whether spayed or not. He may not accept bulls and bull calves.

(A) The operator may only admit "S" branded heifers who have their central pair of deciduous (temporary) incisor teeth and weigh less than 500 pounds at the time of admission.

(B) The operator may not admit "S" branded heifers that show visible evidence of pregnancy.

(4) The operator shall obtain an "S" brand permit for all heifers prior to their leaving the quarantined pasture and shall be responsible for their moving either:

(A) to a market to be sold for movement directly to slaughter or to a quarantined feedlot or designated pen; or

(B) directly to slaughter; or

(C) directly to a quarantined feedlot or designated pen.

(5) Prior to expiration of the quarantined pasture application for "S" branded heifers, the operator may reapply for renewal of the quarantined pasture designation for the same premises. An on-site inspection of the premise shall be made by commission or USDA, APHIS, VS personnel prior to granting approval for renewal of the quarantined pasture pursuant to requirements of paragraphs (1) and (3) of this subsection.

(6) An applicant denied approval may reapply any time upon a substantial change in circumstances.

(q) Market cattle identification. All cattle 18 months of age and older except steers and spayed heifers which are being moved from markets to slaughtering establishments shall be identified by a USDA approved backtag placed just below the midline and just behind the shoulder of the animal. The check-in document will identify each backtagged animal to the consignor.

(r) Requirements for Designated Pens. Cattle exposed to brucellosis may be moved into designated pens in feedlots provided they meet the following requirements.

(1) The designated pens shall be maintained for finish feeding of cattle in dry lot with no provisions for pasturing or grazing.

(2) Double cattle-proof fences shall separate the designated pens from the remainder of the feedlot with at least 12 feet of space between the fences where cattle are not maintained. An alley may satisfy this separation requirement as long as neither food nor water is available and cattle are not maintained in the alley.

(3) All parturient and post parturient cattle must be officially tested negative for brucellosis within 30 days prior to entry into designated pens, classified as exposed to brucellosis and handled as specified in this section.

(4) Cattle going to designated pens will be unloaded and moved directly into those pens, and not held in common receiving areas used for cattle not destined for designated pens.

(5) All cattle must be permanently identified with a hot iron "S" brand either on the left jaw or high on the tailhead upon entering the designated pens.

(6) Cattle fed in designated pens may be processed or treated in common processing, sick, or hospital areas if the common area is cleaned and disinfected with an approved disinfectant after each use for these cattle and prior to use by cattle not from designated pens. If separate facilities are used for cattle from designated pens, cleaning and disinfecting are not necessary.

(7) All cattle leaving such designated pens must go directly to slaughter accompanied by a VS 1-27 permit.

(8) Detailed records of all cattle entering and leaving the designated pens, including dates and numbers of cattle, must be maintained by the feedlot for inspection by Commission representatives.

(9) If designated pen status is eliminated or deactivated, either on the feedlot's request or on determination by the Commission, the designated pen status will be removed after the need for cleaning and disinfecting of the designated pens is evaluated.

(s) Entering premises. Representatives engaged in the Brucellosis Control Program are authorized to enter into any property for the exercise of any authority or the performance of any duties authorized in this regulation and shall practice such sanitary procedures so as to minimize the risk of physically transmitting the disease to other premises. Owners and caretakers owning or having charge of cattle shall gather their cattle and furnish necessary labor in drawing blood or milk samples, vaccinating and identifying animals.

(t) Requirements for cleaning and disinfecting.

(1) Dairy. When reactors are disclosed in cattle which use the same facilities daily, those facilities will be cleaned and disinfected under the supervision of Approved Personnel upon removal of infected animals.

(2) Beef. As determined by Approved Personnel under individual herd plan following removal of reactor animals.

(u) Requirements on dealer recordkeeping. Any dealer must maintain records of cattle that are parturient or postparturient or 18 months of age or older. Such records shall show the buyer's and seller's name and address, county of origin, number of animals, and a description of each animal, including sex, age, color, breed, brand, and individual identification such as eartag, bangle tag, backtag, tattoo or firebrand. Records at auctions and commission firms shall show the delivery vehicle license number. All dealer records must be maintained for a minimum of two years after the date of the transaction.

(v) Brucellosis advisory committees. There may be one or more committees of cattle owners in the state, appointed by the chairman of the commission, to serve at the pleasure of the Commission, for the purposes of advising the commission on matters pertaining to the brucellosis program.

§35.3. Requirements for Certified Brucellosis Free Herd of Cattle.

(a) Complete and sign herd plan agreement with the Texas Animal Health Commission and the United States Department of Agriculture, Animal and Plant Health Inspection Service and Veterinary Services.

(b) Testing will be on a herd basis including all offspring that are of an age to be tested. Certified free herd status is for a 12-month period.

(c) Cattle required to be tested. All cattle, except steers and spayed heifers, are subject to test requirements at 18 months of age.

(d) Qualifying methods. A herd may qualify by one or more of the following methods:

(1) Initial certification.

(A) Brucellosis Milk Surveillance Test (BMST). A minimum of four consecutive, negative brucellosis milk surveillance tests conducted at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last negative brucellosis milk surveillance test.

(B) Complete herd blood test. Two consecutive, negative blood tests of all cattle required to be tested not less than 10 months, nor more than 14 months apart.

(2) Recertification. For continuous certification, a herd must have a negative herd blood test of all cattle required to be tested conducted within 60 days before the certification anniversary date. If the certification test is conducted within 60 days after the anniversary date, the certification period will be 12 months from the anniversary and not 12 months from the date of the recertifying test. During the interval between the anniversary date and the recertifying test, certification will be suspended. If a herd blood test for recertification is not conducted within 60 days after the anniversary date, the certification requirements are the same as for initial certification. BMST [~~BRT~~] procedures are not used for recertifying herds.

(3) Purchase of a certified free herd.

(A) A negative herd blood test is not required when the cattle remain on the premises. A new certificate will be issued in the owner's name. The anniversary date and the herd number will remain the same.

(B) All or part of a certified free herd purchased and moved directly to premises without other cattle may qualify without a test. A new certification number will be issued. The anniversary date of the new herd is established by the test date of the herd of origin or by a new herd test of the purchased cattle.

(e) Qualifying Standards.

(1) Herd infection rates. The individual herd must disclose no evidence of infection at the time of initial certification or recertification. (A negative blood test and a complete epidemiological investigation may be used to resolve a suspicious BMST in qualifying a dairy herd.)

(2) Animal infection rates. The individual animals must disclose no evidence of infection at the time of initial herd certification or recertification.

(3) Suspects. When suspects are disclosed, an individual herd plan shall be developed for the future testing of the suspect(s) and the handling of the herd.

(4) Herd status, if reactors are classified. When one or more reactors are disclosed in a certified herd or in a herd under test for initial certification, it shall be considered affected and the quarantine and retest provisions shall apply. If a retest of a certified herd or of animals from such a herd reveals only one reactor, the certification status will be suspended until all provisions for release of quarantine have been met. If more than one reactor is disclosed, the herd certification is terminated until all provisions for release of quarantine have been met, and when additional provisions for initial certified brucellosis-free herd status required under subsection (d)(1) of this section have been met. Herd retests for quarantine release, and to fulfill the provisions required under subsection (d)(1) of this section may be conducted concurrently.

(5) Movement of cattle into a certified brucellosis-free herd.

(A) From certified brucellosis-free herds or class free states or areas. No test requirements on breeding or dairy cattle originating from certified brucellosis-free herds or class free states or areas. Cattle added to a certified brucellosis-free herd under this provision shall not receive new herd status for sale purposes until they have passed a 60-120 day post-entry retest.

(B) From Class "A" or "B" states or areas. Cattle required to be tested from herds not under quarantine must meet all interstate and intrastate movement requirements and must be retested negative between 60 and 120 days after being moved. Cattle added to a certified brucellosis-free herd under this provision shall not receive new herd status for sale purposes until they have passed a 60-120 day post-entry retest and have been included in an anniversary herd test.

(f) Proof of qualifying as a certified brucellosis herd.

(1) Initially a certificate will be issued.

(2) Recertification will be done by renewal certificate showing only the certified free herd number, number of animals, and owner.

§35.4. Entry, Movement, and Change of Ownership.

(a) Requirements for cattle from foreign countries without comparable brucellosis status that enter and remain in Texas. (Note: Cattle from foreign countries with comparable brucellosis status would enter by meeting the requirements for a state with similar status.)

(1) Permit requirement. Sexually intact cattle must obtain an "E" permit from the Texas Animal Health Commission prior to moving to a destination in Texas other than direct to slaughter, quarantined feedlot or designated pens. The permit number must be entered on the Importation Certificate (VS Form 17-30) and a copy of that certificate forwarded to the Commission's office in Austin immediately following issuance.

(2) Branding requirements.

(A) Sexually intact cattle destined for a quarantined feedlot or designated pen must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen.

(B) Spayed heifers shall be identified by branding [~~spade branded~~] prior to entry as specified in §35.1 of this title (relating to Definitions).

(3) Vaccination requirement. Non vaccinated sexually intact female cattle between four and 12 months of age entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be placed under quarantine on arrival and officially brucellosis vaccinated as outlined in §35.2(m) of this title (relating to General Requirements). The quarantine may be released after meeting test requirements.

(4) Testing requirements for bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. Bulls entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine and retested 120 to 180 days after arrival. The quarantine will be released following a negative brucellosis test.

(5) Testing requirements for females entering for purposes other than immediate slaughter or feeding in a quarantined feedlot or designated pen. All sexually intact female cattle entering for purposes other than immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen shall be tested at the port of entry into Texas under the supervision of the port veterinarian, and placed under quarantine on arrival and retested for brucellosis in no less than 120 days nor more than 180 days after arrival for release of the quarantine; however. if the sexually intact female cattle have not had their first calf prior to the 120 to 180 day post entry test, the quarantine will not be released until a second negative test for brucellosis is conducted no sooner than 30 days after the animal has had its first calf and the second negative test has been confirmed. [~~The releasing negative test shall not be sooner than 30 days after the animal has had its first calf.~~]

(6) Testing requirements for sexually intact cattle moving directly to a quarantined feedlot or designated pen. All sexually intact cattle destined for feeding for slaughter in a quarantined feedlot or designated pen must be tested at the port of entry into Texas under the supervision of the port veterinarian. These cattle must be "S"-branded prior to or upon arrival at the quarantined feedlot or designated pen, and may move to the quarantined feedlot or designated pen only in sealed trucks with a VS 1-27 permit issued by a representative of TAHC or USDA personnel.

(7) Responsibility for costs. All costs of calfhood vaccination, [~~testing, and retesting~~] shall be borne by the owner.

(b) Requirements for cattle entering Texas from other states.

(1) Vaccination. All female cattle between four and 12 months of age shall be officially vaccinated prior to entry. Exceptions to these vaccination requirements:

(A) Female cattle entering for purposes of shows, fairs and exhibitions and returning to their original location.

(B) Female cattle moving within commuter herds.

(C) Spayed heifers.

(D) Nonvaccinated female cattle between four and 12 months of age consigned from an out-of-state farm of origin will be accompanied by a waybill to a Texas market, feedlot for feeding for slaughter or direct to slaughter. These cattle may be vaccinated at the market at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.

(E) Non vaccinated female cattle between four and 12 months of age consigned from an out-of-state livestock market to a Texas livestock market, feedlot for feeding for slaughter or direct to slaughter will be accompanied by an "S" permit or certificate of veterinary inspection. Individual identification is not required. These cattle may be vaccinated at no expense to the state prior to leaving the market and be moved freely. If these cattle are not vaccinated at the market then they shall be consigned from the market only to a feedlot for feeding for slaughter or direct to slaughter, accompanied by an "S" permit. Cattle from other than Class Free states entering for feeding for slaughter shall also be "F"-branded high on tail-head prior to or upon entering the feedlot.

(F) Non vaccinated female cattle between four and 12 months of age moving may enter on a calfhood vaccination permit and must be vaccinated at no expense to the state within 14 days after arriving at the premise of destination.

(2) Testing. All non-quarantined cattle that are parturient or post parturient or that are 18 months of age and over(as evidenced by the loss of the first pair of temporary incisor teeth), except steers and spayed heifers entering Texas:

(A) shall be moved directly from:

(i) a class free state or area; or

(ii) a certified free herd; or

(iii) a commuter herd as defined in these sections; or

(B) Cattle not from class free states or areas, certified brucellosis free herds, or commuter herds shall be "S" branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter, accompanied with an "S" permit, or moved directly from a farm of origin to a USDA specifically approved livestock market to be "S"-branded and moved directly to a quarantined feedlot, to designated pens, or to slaughter accompanied with an "S" permit; or

(C) rodeo bulls participating in a recognized and organized performance group may be moved without meeting other testing requirements provided:

(i) the bulls have been subjected to an official negative test for brucellosis within the previous 12 months; and

(ii) each bull is individually identified; and

(iii) there is no change of ownership; and

(iv) they are accompanied with an "E" permit; or

(D) shall be tested negative one or more times as described in this subparagraph:

(i) cattle from a Class "A" state or area shall:

(I) be tested negative within 30 days prior to entry; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test prior to sale;

(ii) cattle from a class "B" state or area shall:

(I) be tested negative within 30 days prior to entry, accompanied with an "E" permit, and held under quarantine for a negative retest 45-120 days at a farm, ranch, or feedlot; or

(II) be moved directly from a farm of origin to a USDA specifically approved livestock market for a negative test and held under quarantine for a negative retest 45-120 days after sale to a farm, ranch, or feedlot.

(c) Change of ownership within Texas.

(1) Vaccination. It is recommended that all female cattle between four and 12 months of age being purchased or sold for use in grazing, breeding, or dairying operations be officially vaccinated.

(2) Testing. All cattle that are parturient or post parturient or 18 months of age and older except steers and spayed heifers changing ownership within Texas shall:

(A) originate from a certified free herd; or

(B) be tested negative by the seller within 30 days prior to sale; or

(C) consigned to a livestock market and tested negative prior to sale; or

(D) consigned to a slaughter establishment for testing or blood collection.

(d) Movement to Mexico. All cattle 18 months of age and older except steers and spayed heifers must be tested negative within 30 days prior to export to Mexico for slaughter. Steers, spayed heifers, and feedlot finished bulls and heifers are not required to be tested prior to export. Test results must be recorded on the Certificate of Veterinary Inspection.

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 August 7, 2000.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0714

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SUBCHAPTER B. ERADICATION OF BRUCELLOSIS IN SWINE

4 TAC §35.42

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

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

§35.42. Classification of Swine by Blood and Semen Tests.

(a) Tests on blood serum.

(1) Standard card test (SCT). Card test results are used to classify swine as positive or negative. All swine positive to the SCT should be subjected to confirmatory testing.

(2) Confirmatory test procedures. The Particle Concentration Fluorescence Immunoassay (PCFIA) will serve as the confirmatory test.
Figure: 4 TAC §35.42(a)(2) (No change.)

(3) Rivanol test. The results of the Rivanol test are to be evaluated by the designated brucellosis epidemiologist.
Figure: 4 TAC §35.42(a)(3) (No change.)

(b) Semen plasma test. This test is approved for use as a supplemental test of boars used for artificial insemination but must be employed with other serological tests. Final classification will be based on the most reactive test procedure.

(c) Animals testing positive on any blood test performed will be considered as brucellosis exposed swine and an initial test of the herd of origin will be conducted within a specified time set by a state-federal veterinarian upon consultation with the herd owner unless waived by the designated brucellosis epidemiologist.

(d) When deemed necessary to the establishment of a final herd diagnosis by the epidemiologist, the purchase of an individual animal with equivocal serological testing results is authorized in order to secure the tissues needed to arrive at a definitive herd diagnosis. The rate of indemnity shall not exceed the fair market value for an individual animal. The indemnity is subject to the availability of funds. The Commission will pay the owner the unreimbursed amount determined by deducting the salvage value and any applicable federal indemnity from the appraised value not to exceed $100.00 for each animal classified under this subsection.

(e) [~~(d)~~] Reclassification. Animals may be reclassified by the designated epidemiologist when consideration and evaluation of relevant bacteriologic, serologic, or epidemiological evidence justifies the reclassification.

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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Gene Snelson
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For further information, please call: (512) 719-0714

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SUBCHAPTER C. ERADICATION OF BRUCELLOSIS IN GOATS

4 TAC §§35.60 - 35.62

The amendments and new rule are proposed under the Texas Agriculture Code, Chapter 161, §161.041, entitled "Disease Control", and provide that "the commission shall protect all livestock, domestic animals, and domestic fowl from infectious abortion." The commission may adopt any rules necessary to carry out the purposes of this subsection, including rules concerning testing, movement, inspection, and treatment. Section 161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.058, entitled "Compensation of Livestock Owner", provides that the commission may pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers

it necessary to eradicate the disease. The commission may adopt rules for the implementation of this section.

Also, Chapter 163 of the Agriculture Code provides in §163.064 that the commission may provide rules prescribing criteria for the classification of cattle for the purpose of brucellosis testing. Section 163.087, entitled "Improper Sale Or Use Of Vaccine Or Antigen," provides that "a person commits an offense if the person sells or administers a brucellosis antigen or vaccine in violation of §163.064 of this code." Also, §163.085, entitled "Failure To Properly Handle Infected Animal," provides that "(a) person commits an offense if the person knowingly refuses to handle in accordance with the rules of the commission an animal that the commission has classified as infected with brucellosis."

No other statutes, articles, or codes are affected by the amendments and new rule.

§35.60. Definitions.

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

(1) Adjacent herd--A herd of livestock that occupies a premise that lies within one mile of an affected herd.

(2) Affected herd--A herd in which any animal(s) has been classified as a reactor or suspect and the requirements of the individual herd plan have not been met.

(3) Approved laboratory--A State or Federal veterinary diagnostic laboratory for brucellosis testing that must be approved by USDA, APHIS, VS and State animal health authorities.

(4) Approved personnel--Texas Animal Health Commission inspectors and veterinarians; Federal Animal Health technicians and veterinarians; accredited Texas veterinarians; and others who have been approved to do those assigned duties as described in these regulations for brucellosis control and eradication.

[(1) BRT--A test of milk from either a single animal or several animals to determine presence of the brucella organism.]

(5) Brucellosis--For purposes of this regulation, brucellosis is a contagious, infectious disease of cattle, sheep, goats, horses, and swine caused by *Brucella melitensis.*

(6) [(2)] Certified free herd--A Herd [herd] that is operating under a signed agreement with the commission and has met the requirements of §35.62 [35.61] (d) of this title (relating to Requirements for Certified Brucellosis Free Herd of [Dairy] Goats).

(7) Commission--Texas Animal Health Commission.

(8) Epidemiologist--A veterinarian who has received a degree in epidemiology and is employed by the commission or USDA, APHIS, VS.

(9) Executive director--The chief executive director of the Texas Animal Health Commission appointed by the commissioners and authorized to act for the commissioners in the absence of the chairman.

(10) Exposed livestock--Animals that are part of an affected herd or animals that have been in contact with an affected animal. These animals shall be classified as exposed regardless of any blood test results.

(11) [(3) Dairy] Goats--Domestic caprine (genus Capra) kept for the purpose of producing meat, milk or fiber [for human consumption].

(12) [(4)] Herd--All animals maintained on a single premise which are commingled; and all animals under common ownership or supervision on two or more premises with animal interchange between the premises. [A group of dairy goats maintained on common ground, or two or more groups of dairy goats under common ownership or supervision geographically separated but which have an interchange or movement without regard to health status. (A group is construed to mean one or more animals.)]

(13) High risk herd--A herd that is epidemiologically judged by a state-federal veterinarian to have a high probability of having or developing brucellosis. A high risk need not be located on the same premise as an infected or adjacent herd.

(14) Hold order--A document restricting movement of a herd, unit, or individual animal pending the determination of disease status.

(15) [(5)] Individual herd plan--A [herd] disease management and testing plan to prevent, control, and eliminate brucellosis in a herd [of dairy goats].

[(6) Negative herd blood test--A test where all the male and female dairy goats over six months of age located on the premise were tested and found negative to the blood test.]

[(7) Negative milk ring tests--These are tests where the results have failed to indicate the presence of brucella in the milk.]

(16) Official identification--A Veterinary Services or TAHC approved identification eartag, registration tattoo, or other approved device that uniquely identifies each individual animal. The official identification may not be removed from the animal.

(17) Premise--An area defined by the outermost boundary of land under common ownership or control enclosed by a perimeter fence of other boundary. A premise may consist of more than one pasture.

[(8) Provisions for release of quarantine--Same as the provisions for the release of quarantine for bovine brucellosis (see §35.2(l)(7) of this title (relating to General Requirements)).]

[(9) Quarantine and retest provisions--Provides for the issuance of a quarantine when infection is disclosed and for timeframes for herd tests to rid the herd of infection. These provisions are the same as the ones found in the bovine brucellosis regulation.]

(18) [(10)] Reactor--Animals [Dairy goats] classified as being infected with brucellosis as a result of serological testing or microbiological culturing of blood, tissue, secretions, or excretions from the animal.

(19) Regulatory Veterinarian--A veterinarian employed by TAHC or USDA, APHIS, VS.

(20) Sheep--Domestic ovine (genus ovis) kept for the purpose of producing milk, meat, or fiber.

(21) [(11)] Suspect--Animals [Dairy goats] classified as suspicious of being infected with brucellosis as a result of serological tests [testing of blood, secretions, or excretions from the animal].

§35.61. General Requirements [Requirements for Certified Brucellosis Free Herd of Dairy Goats].

(a) Testing of blood.

(1) All tests shall be made by approved personnel only as the basis for compliance with these regulations.

(2) All tests must be confirmed by an approved laboratory as the basis for compliance with these regulations.

(3) Samples for all retest purposes will be collected by commission or APHIS personnel and submitted to an approved laboratory for confirmation testing.

(b) Classification or goats. (Note: this paragraph also pertains to sheep). Test results shall be interpreted by State or Federal regulatory veterinarians. The following are approved tests:

(1) Card test. The card (buffered Brucella antigen, or BBA test) may be used to test goats. The 3% (antigen concentration) BBA test is used as a presumptive or screening test. The 8% (antigen concentration) BBA test may be used as a definitive test. Results of the card test may be used with other test results conducted in the approved laboratory to aid in the classification of animals.

(2) Manual complement fixation (CF) test.

(A) Interpretation of the manual CF test results.
Figure: 4 TAC §35.61(b)(2)(A)

(B) Interpretation of test result codes. The following codes are utilized by the laboratory to represent the corresponding test results:
Figure: 4 TAC §35.61(b)(2)(B)

(3) Standard tube agglutination test (STT) or standard plate agglutination test (SPT). Interpretation of STT and SPT tests.
Figure: 4 TAC §35.61(b)(3)

(4) Particle concentration fluorescence immunoassay (PCFIA) test. May be used to determine the brucellosis disease status of livestock when conducted by methods approved by USDA, APHIS, VS. Interpretation of PCFIA test results.
Figure: 4 TAC §35.61(b)(4)

(5) New tests under research. Laboratory tests approved by the executive director are authorized to be used in conjunction with tests listed in this subsection for evaluation of their future usefulness in the program.

(c) Reclassification of reactors. Animals initially classified as reactors may be reclassified provided a complete epidemiological investigation of the herd is conducted and there is no evidence of field strain *Brucella melitensis* infection exposure thereto.

(d) Requirements of a herd test.

(1) Test eligibility-All goats that are one year of age or older as evidenced by the eruption of their first permanent incisor teeth shall be included in the herd test. Testing requirements for species other than goats will be specified by the epidemiologist.

(2) Identification requirements. All animals tested shall be identified with an official identification.

(e) Procedures in affected herds.

(1) Herds which contain animals classified as suspects shall be placed under hold order. The suspect or herd shall be retested as necessary to establish a final diagnosis.

(2) Herds which infection has been diagnosed by a State/Federal regulatory veterinarian based on culture, serology, or epidemiological evidence, with concurrence by the epidemiologist, will be placed under quarantine. An individual herd plan outlining procedures to eliminate the disease will be developed by the regulatory veterinarian in consultation with the epidemiologist and the herd owner or caretaker and his veterinarian (if requested by the owner). If a plan cannot be agreed upon, then the plan developed by the commission shall be final and the owner caretaker will be provided a copy. The plan shall include provisions for depopulation of exposed livestock as specified in (f) of this section. The quarantine may be released 30 days after completion of depopulation and any required cleaning/disinfecting. The premise shall not be restocked prior to quarantine release.

(3) An epidemiological investigation will be performed following the diagnosis of infection. All exposed livestock, adjacent and high risk herds shall be placed under hold order and tested one or more times as deemed necessary by the epidemiologist. Testing requirements for species other than goats will be specified by the epidemiologist.

(f) Depopulation with indemnity.

(1) All exposed livestock shall be humanely destroyed and disposed of on the premise where disclosed or at a facility approved by the Executive Director.

(2) When it has been determined that an animal has brucellosis or was exposed the Commission may pay indemnity. This is subject to the availability of funds and this is determined by the unreimbursed amount determined by deducting the federal compensation from the appraised value not to exceed $100.00 for each animal classified under this subsection for no more than one hundred (100) animals.

~~[(a) A herd plan agreement must be completed and signed with the Texas Animal Health Commission.]~~

~~[(b) Brucellosis testing will be on a herd basis including all offspring that are of an age to be tested. Certified free herd status is for a 12-month period.]~~

~~[(c) All male and female dairy goats that are part of the herd and are six months of age or older are required to be tested.]~~

~~[(d) Qualifying methods:]~~

~~[(1) initial certification:]~~

~~[(A) milk ring test (BRT). A minimum of four consecutive, negative milk ring tests conducted at not less than 90-day intervals, followed by a negative herd blood test conducted within 90 days after the last negative milk ring test;]~~

~~[(B) complete herd blood test. Two consecutive, negative blood tests of all goats required to be tested not less than 10 months, nor more than 14 months apart;]~~

~~[(2) recertification. A negative herd blood test of all dairy goats required to be tested, conducted within 60 days of the anniversary date, is required for continuous certification. If the certification test is conducted within 60 days of the anniversary date, the certification period will be 12 months from the anniversary and not 12 months from the date of the recertifying test. If a herd blood test for recertification is not conducted within 60 days following the anniversary date, then certification requirements are the same as for initial certification;]~~

~~[(3) purchase of a certified free herd:]~~

~~[(A) negative herd blood test is not required when the dairy goats remain on the premises. A new certificate will be issued in the owner's name. The anniversary date and the herd number will remain the same;]~~

~~[(B) all or part of a certified free herd purchased and moved directly to premises without other goats may qualify without a test. A new certification number will be issued. The anniversary date of the new herd is established by the test date of the herd of origin or by a new herd test of the purchased goats.]~~

~~[(e) Qualifying standards:]~~

~~[(1) herd infection rates. The individual herd must disclose no evidence of infection at the time of initial certification or recertification;]~~

~~[(2) animal infection rates. The individual animals must disclose no evidence of infection at the time of initial herd certification or recertification;]~~

~~[(3) suspects. When suspects are disclosed, an individual herd plan shall be developed for the future testing of the suspect(s) and the handling of the herd;]~~

~~[(4) herd status, if reactors are classified. When one or more reactors are disclosed in a certified herd or in a herd under test for initial certification, it shall be considered affected and the quarantine and retest provisions shall apply. If a retest of a certified herd, or of animals from such a herd reveals only one reactor, the certification status will be suspended until all provisions for release of quarantine have been met. If more than one reactor is disclosed, the herd certification is terminated until all provisions for release of quarantine have been met, and when additional provisions for initial certified brucellosis free herd status required under subsection (d)(1) of this section, concerning initial certification, have been met. Herd retests for quarantine release, and to fulfill the provisions required under subsection (d)(1) of this section, concerning initial certification, may be conducted concurrently;]~~

~~[(5) movement of goats into a certified brucellosis free herd from certified brucellosis free herds. No test requirements on dairy goats originating from certified brucellosis-free herds. Goats added to a certified brucellosis free herd under this provision shall not receive new herd status for sale purposes until they have passed a 60-120 day postentry retest.]~~

~~[(f) Proof of qualifying as a certified brucellosis free herd:]~~

~~[(1) initially a certificate will be issued;]~~

~~[(2) recertification will be done by renewal certificate showing only the certified free herd number, number of animals, and owner.]~~

~~[(g) Requirements following classification of a dairy goat as a reactor or suspect. Goat herds with animals classified as reactors or suspects will be quarantined and tested on the same schedule as cattle (see §35.2(l) of this title (relating to General Requirements)).]~~

§35.62. Requirements for Certified Brucellosis Free Herd of Goats.

(a) A certified brucellosis free goat agreement must be completed and signed with the Texas Animal Health Commission.

(b) Brucellosis testing will be on a herd basis. Certified free herd status is for a 12-month period.

(c) Goats required to be tested--all sexually intact goats are required to be tested at one year of age or older as evidenced by the eruption of their first pair of permanent incisor teeth.

(d) Qualifying methods:

(1) Initial certification. Two consecutive, negative blood tests of all goats required to be tested not less than 10 months, nor more than 14 months apart;

(2) Recertification. For continuous certification, a herd must have a negative herd test of all goats required to be tested conducted within 60 days before the certification anniversary date. If the certification test is conducted within 60 days after the anniversary date, the certification period will be 12 months from the anniversary and not 12 months from the date of the recertifying test. During the interval between the anniversary date and the recertifying test, certification will be suspended. If a herd test for recertification is not conducted within 60 days after the anniversary date, the certification requirements are the same as for initial certification.

(3) Purchase of a certified free herd:

(A) A negative herd blood test is not required when the goats remain on the premises. A new certificate will be issued in the owner's name. The anniversary date and the herd number will remain the same;

(B) All or part of a certified free herd purchased and moved directly to premises without other goats may qualify without a test. A new certification number will be issued. The anniversary date of the new herd is established by the test date of the herd of origin or by a new herd test of the purchased goats.

(e) Qualifying standards:

(1) Herd infection rates. The individual herd must disclose no evidence of infection at the time of initial certification or recertification;

(2) Animal infection rates. The individual animals must disclose no evidence of infection at the time of initial herd certification or recertification;

(3) Requirements following classification of a goat as a reactor or suspect. Goat herds with animals classified as reactors or suspects will be placed under hold order or quarantine and follow requirements as outlined in §35.61 of this title (relating to General Requirements).

(4) Movement of goats into a certified brucellosis free herd from certified brucellosis free herds. No test is required on goats originated from certified brucellosis free herds. Goats added to a certified brucellosis free herd under this provision shall not receive new herd status for sale purposes until they have passed a 60-120 day post entry test.

(f) Proof of qualifying as a certified brucellosis free herd:

(1) Initially a certificate will be issued.

(2) Recertification will be done by renewal certificate showing only the certified free herd number, number of animals, and owner.

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 August 7, 2000.

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Gene Snelson
General Counsel
Texas Animal Health Commission
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For further information, please call: (512) 719-0714

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CHAPTER 43. TUBERCULOSIS

The Texas Animal Health Commission (commission) proposes amendments to Chapter 43, Subchapters A & B, concerning the Eradication of Tuberculosis. This proposal amends Subchapter A, §43.2, which provides interstate movement requirements for cattle, and also proposes to amend Subchapter B, §43.12, which is requirements for entry into Texas for goats.

The rules are amended to address the tuberculosis conditions that have been verified in the state of Michigan. The Commission recently adopted specific entry requirements for animals coming from all of Michigan in response to the status of the quarantine affecting the whole state. Earlier, the commission had specific entry requirements for cattle and goats coming from a specific quarantine area in Michigan, as designated in the rules. However, as tuberculosis was recently discovered in animals outside of the quarantine zone, the commission recently adopted changes to the rule by requiring a special entry requirement for cattle and goats coming from all other areas in Michigan. This requirement is proposed to be added to reduce the risk of allowing a potentially infected animal to move from Michigan into Texas.

Most recently Michigan has found that tuberculosis is having a persistent impact on Michigan livestock giving the state of Texas heightened concern over animals coming to Texas from Michigan. The Commission is proposing new changes to entry requirements in order to protect cattle and goats as well as to establish new standards for deer from Michigan. These rules propose to affect all cattle, bison, goats and cervidae from Michigan and require that an animal originate from a herd that has been tested, as well as, to require an individual test within sixty days of entry into Texas. Furthermore, the rule is being amended to denote that the quarantine zone will also include any other counties or parts of counties added at a later date.

Mrs. Angela Lucas, Director of Financial Services, Texas Animal Health Commission, has determined for the first five-year period the rules are in effect, there will be no additional fiscal implications for state or local government as a result of enforcing or administering the rules. The agency currently administers the tuberculosis program which includes the entry requirements for animals coming into Texas. The proposed changes will not create any additional costs to the agency to administer the program.

Mrs. Lucas also has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clear and concise regulations. Also, the rule is being proposed in order to protect Texas livestock from potentially being exposed to tuberculosis from Michigan.

In accordance with Government Code, §2001.022, this agency has determined that the proposed rule will not impact local economies and, therefore, did not file a request for a local employment impact statement with the Texas Workforce Commission.

The agency has determined that the proposed governmental action will not affect private real property. These proposed rules are an activity related to the handling of animals, including requirements concerning testing, movement, inspection, identification, reporting of disease, and treatment, in accordance with 4 TAC §59.7, and are, therefore, compliant with the Private Real Property Preservation Act in Government Code, Chapter 2007.

Comments regarding the proposed amendments may be submitted to Edith Smith, Texas Animal Health Commission, 2105 Kramer Lane, Austin, Texas 78758.

SUBCHAPTER A. CATTLE

4 TAC §43.2

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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

§43.2. Interstate Movement Requirements.

(a) All dairy and registered beef breeding cattle that are parturient or postparturient or 18 months of age or older shall be tested negative for tuberculosis within six months prior to entry with results of this test recorded on the certificate of veterinary inspection.

(b) All dairy and registered beef breeding cattle originating from an accredited tuberculosis free area or herd are exempt from testing requirements in subsection (a) of this section provided the herd number is stated on the certificate of veterinary inspection. All dairy and registered beef breeding cattle moving directly from a farm-of-origin to a USDA-approved market in Texas are exempt from testing requirements provided the animals are held in quarantine pens at the market to be sold to slaughter or quarantined feedlot.

(c) All sexually intact cattle, from any foreign country or part thereof with no recognized comparable Tuberculosis status:

(1) To be held for purposes other than for immediate slaughter or feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port of entry into Texas under the supervision of the port veterinarian, and shall be under quarantine on the first premise of destination in Texas pending a negative tuberculosis test no earlier than 120 days and no later than 180 days after arrival. The test will be performed at the owner's expense.

(2) When destined for feeding for slaughter in a quarantined feedlot or designated pen, must be tested at the port-of-entry into Texas under the supervision of the port veterinarian; moved directly to the quarantined feedlot or designated pen only in sealed trucks; accompanied with a VS 1-27 permit issued by TAHC or USDA personnel; and "S" branded prior to or upon arrival at the feedlot.

(d) Steers and spayed heifers from Mexico may enter as follows:

(1) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to have fully implemented the Eradication Phase of the Mexican Tuberculosis Eradication Program (Stage II States): steers and spayed heifers must be tested negative for tuberculosis in accordance with the Norma Oficial Mexicana (NOM) within 60 days prior to entry into the United States.

(2) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to have fully implemented the Control/Preparatory Phase of the Mexican Tuberculosis Eradication Program (Stage I States): steers and spayed heifers must be tested negative for tuberculosis prior to movement into a Stage II State. Upon entry into the Stage II State, the animals must be quarantined and have two additional negative tuberculosis tests. The first test in the Stage II State must be conducted at least 60 days after the test in the Stage I State. The second test in the Stage II State must be conducted at least 60 days after the first test in the Stage II State, but not more than 60 days before moving to the United States border.

(3) From states that have been determined by the Commission, acting on the recommendation of the Binational Committee, to have achieved Accredited Free status (Accredited Free States): steers and spayed heifers may move directly into the state without testing or further restrictions provided they are moved as a single group, and not commingled with other cattle prior to arriving at the border.

(4) From states that are not Stage II, Stage I, or Accredited Free (Stage 0 States): Steers and spayed heifers must be tested negative for tuberculosis prior to movement into a Stage II State. Upon entry into a Stage II State, the animals must be quarantined and have two additional negative tuberculosis tests. The first test while in the Stage II State must be conducted at least 60 days after the test in the Stage 0 State. The second test, while in the Stage II State, must be conducted at least 90 days after the first test in the Stage II State, but no more than 60 days before moving to the United States border.

(5) From Accredited Tuberculosis Free herds from Stage I or Stage 0 States: steers and spayed heifers that are moved directly from the herd of origin across the border as a single group and not commingled with other cattle prior to arriving at the border may enter as follows:

(A) Steers and spayed heifers originating from a Stage I State may move into a Stage II State without a tuberculosis test and enter Texas after meeting the requirements set out in paragraph (1) of this subsection.

(B) Steers and spayed heifers originating from Stage 0 States may move into a Stage II State without a tuberculosis test and enter Texas after meeting the requirements set out in paragraph (2) of this subsection.

(6) All steers and spayed heifers arriving at ports for export from Mexico into the U.S. must be accompanied by a "Certificate of Origin" specifying the State in Mexico from which the consignment originated. Additionally, tuberculosis tests required by the State of destination in the U.S. must be listed on the certificate or accompany the certificate.

(e) In addition to the entry requirements set out in subsections (c) and (d) of this section, rodeo stock from Mexico shall be tested for tuberculosis by a U.S. accredited veterinarian or under the supervision of a USDA/APHIS port veterinarian within 12 months prior to their utilization as rodeo or roping stock, and retested for tuberculosis every 12 months thereafter.

(f) Regardless of reproductive status, test history, or Mexican State of origin, Holstein and Holstein cross cattle are prohibited from entering Texas.

(g) All other cattle from foreign countries, foreign states, or areas within foreign countries defined by the Commission, with comparable tuberculosis status would enter by meeting the requirements for a state with similar status as stated in subsections (a) and (b) of this section.

(h) "M"-branding requirements are set out in §41.1 of this title (relating to Tick Eradication).

(i) Special entry requirements for cattle and bison originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by I-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties as well as any other counties or parts of counties added to the quarantine zone by the state of Michigan.

(1) All cattle and bison shall originate from an accredited herd.

(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.

(j) Special entry requirements for cattle and bison originating from all other areas in Michigan, as provided in subsection (i) of this section. All cattle and bison [~~sexually intact cattle and bison six months of age and older~~] shall:

(1) originate from an accredited herd; or

(2) originate from a herd that had a negative whole herd test including all animals 12 months and older during the previous 12 months; and

[~~(2) be tested negative for tuberculosis within 60 days prior to entry.~~]

(3) be tested negative for tuberculosis within 60 days prior to entry with results of the tests recorded on the certificate of veterinary inspection.

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

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SUBCHAPTER B. GOATS

4 TAC §43.12

The amendment is proposed under the Texas Agriculture Code, Chapter 161, §161.041 (a) and (b), and §161.046 which authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Also, §161.054 authorizes the commission to regulate by rule the movement of animals. This is further supported by §161.081 which authorizes the commission to regulate the entry of such livestock into Texas from another state.

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

§43.12. Requirements for Entry Into Texas.

(a) The following listed in this section are special entry requirements for goats originating from the TB quarantined area in Michigan. The quarantined area defined by the Michigan Department of Agriculture, effective January 1, 1999, includes all premises located in an area bordered by I-75 to the west, M-55 to the south, and Lake Huron and the Straits of Mackinac to the east and north. The quarantined area includes all of the Alcona, Alpena, Montmorency, Oscoda, and Presque Isle counties, and portions of Cheboygan, Crawford, Iosco, Ogemaw, Otsego, and Roscommon counties as well as any other counties or parts of counties added to the quarantine zone by the state of Michigan.

(1) All goats shall originate from an accredited herd.

(2) In addition, all animals 6 months of age and older shall be tested negative for tuberculosis within 60 days prior to entry with results of this test recorded on the certificate of veterinary inspection.

(b) Special entry requirements for goats originating from all other areas in Michigan, as provided in subsection (a) of this section. All [~~sexually intact~~] goats [~~six months of age and older~~] shall:

(1) originate from an accredited herd; or

(2) originate from a herd that had a negative whole herd test including all animals 12 months and older during the previous 12 months; and

(3) [~~(2)~~] be tested negative for tuberculosis within 60 days prior to entry with results of the tests recorded on the certificate of veterinary inspection.

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 August 7, 2000.

TRD-200005465
Greg Snelson
General Counsel
Texas Animal Health Commission
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 719-0714

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING SPECIAL EDUCATION SERVICES

The Texas Education Agency (TEA) proposes amendments to §§89.1001, 89.1011, 89.1015, 89.1035, 89.1055, 89.1065, 89.1075, 89.1090, 89.1095, 89.1121, 89.1125, and 89.1131; the repeal of §§89.1020, 89.1025, 89.1030, 89.1040, 89.1045, 89.1050, 89.1060, 89.1070, 89.1085, 89.1105, 89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, and 89.1190; and new §§89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1056, 89.1060, 89.1070, 89.1076, 89.1085, 89.1096, 89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191, concerning special education services. The sections clarify federal regulations and state statutes pertaining to delivering special education services to students with disabilities. The sections also establish definitions, requirements, and procedures related to: interagency agreements; special education funding; personnel issues; and resolution of disputes between parents and school districts.

The Individuals with Disabilities Education Act (IDEA) Amendments of 1997, was signed into law in June 1997. The final federal regulations were published by the United States Department of Education, Office of Special Education Programs, in March 1999. The IDEA Amendments of 1997 contain numerous changes to the federal law pertaining to the education of students with disabilities. In addition, during the 76th Texas Legislative Session, 1999, several new sections of special education law were added and other sections were amended. As a result of the changes to the federal special education law and regulations and state law, 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter AA, Special Education Services, must be amended to reflect these changes to ensure school district compliance with new procedural and reporting requirements.

The most significant issue pertaining to these proposed changes relates to the proposed amendments to 19 TAC §89.1095 and proposed new §89.1096, relating to dual enrollment. Section 89.1095, proposed to expire on June 30, 2001, required school districts to serve students with disabilities placed in private schools by their parents if the student was dually enrolled in the school district and private school. The amended federal law limits the service that schools and states are obligated to provide to students placed in private schools by their parents. Proposed new §89.1096, proposed for implementation beginning July 1, 2001, addresses these federal regulations. Also, in order to conform to new provisions in IDEA and to promote effective and efficient determination of disputes arising under IDEA, changes to procedural rules are proposed in new §§89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, and 89.1191 pertaining to due process hearings on students with disabilities. In addition to the changes in federal law, the Texas Education Code (TEC) was amended during the legislative session in 1999 to require the commissioner to adopt rules relating to surrogate and foster parents and the transfer of assistive technology devices. As a result of these amendments to state statute, new 19 TAC §89.1047 and §89.1056 are proposed to reflect legislative intent.

Additional changes include: the restructuring of the age ranges and graduation requirements in 19 TAC §89.1035 and §89.1070 to more closely align with federal regulation; the restructuring of the eligible criteria in 19 TAC §89.1040 to more closely align with federal regulation; the addition of 19 TAC §89.1049 pertaining to parental rights regarding adult students; and the alignment of 19 TAC §89.1050 with federal statute and regulation pertaining to discipline and the attendance of the regular teachers at the admission, review, and dismissal (ARD) committee. Also proposed is the inclusion of requirements from 34 Code of Federal Regulations (CFR), §§99.30-99.37, in 19 TAC §89.1050(f), relating to the disclosure of personally identifiable information from education records specific to transfer students. New language is also proposed in 19 TAC §89.1050(h)(1) that clarifies that a district may recess an ARD committee for reasons other than a disagreement of the parent. The proposed repeal of and new 19 TAC §89.1070 provide reorganization of existing language as well as alignment with federal and state laws. New 19 TAC §89.1076 is proposed relating to interventions and sanctions. As a result of TEC, §30.057, a new subsection (d) is proposed in 19 TAC §89.1085, relating to admission to the Texas School for the Deaf.

Also, 19 TAC §89.1105, pertaining to the memorandum of understanding relating to school-age residents of intermediate care facilities, is proposed for repeal because the section expired August 1997. Current 19 TAC §89.1115, pertaining to residential care facilities, includes intermediate care facilities. Subsection (d) of 19 TAC §89.1131, relating to the use of teacher assistants, also expired August 1997 and is proposed for repeal. Additional changes to §89.1131 include the addition of the eligibility category of deaf-blind to 19 TAC §89.1131 to ensure that appropriately certified personnel are in attendance at ARD committee meetings for students who are deaf-blind. Changes are proposed to other sections in order to reflect amended and new federal and state regulations and to provide structure and formatting consistency.

Carol Francois, associate commissioner for education of special populations, has determined that for the first five-year period the

sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Francois and Criss Cloudt, associate commissioner for policy planning and research, have determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be a consistent linkage to the IDEA Amendments of 1997 and its implementing regulations and a specific reference for school districts to the new federal requirements that provide for the education of students with disabilities. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Criss Cloudt, Policy Planning and Research, 1701 North Congress Avenue, Austin, Texas 78701, (512) 463-9701. Comments may also be submitted electronically to *rules@tmail.tea.state.tx.us.* All requests for a public hearing on the proposed sections submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of a proposed change in the sections has been published in the *Texas Register.*

DIVISION 1. GENERAL PROVISIONS

19 TAC §89.1001

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The amendment implements 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057.

§89.1001. Scope and Applicability.

(a) Special education services shall be provided to eligible students in accordance with all applicable federal law and regulations, state statutes, rules of the State Board of Education (SBOE) and commissioner of education, and the State Plan Under Part B of the Individuals with Disabilities Education Act (IDEA).

(b) Education programs, under the direction and control of the Texas Youth Commission, Texas School for the Blind and Visually Impaired, Texas School for the Deaf, and schools within the Texas Department of Criminal Justice shall comply with state and federal law and regulations concerning the delivery of special education and related services to eligible students and shall be monitored by the Texas Education Agency in accordance with the requirements identified in subsection (a) of this section.

(c) A school district having a residential [~~care and treatment~~] facility that is licensed by appropriate state agencies and located within the district's boundaries must provide special education and related services to eligible students residing in the facility if the facility does not have an education program.

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

Filed with the Office of the Secretary of State, on August 7, 2000.

TRD-200005454

Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 463-9701

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DIVISION 2. CLARIFICATION OF PROVISIONS IN FEDERAL REGULATIONS AND STATE LAW

19 TAC §§89.1011, 89.1015, 89.1035, 89.1040, 89.1045, 89.1047, 89.1049, 89.1050, 89.1055, 89.1056, 89.1060, 89.1065, 89.1070, 89.1075, 89.1076, 89.1085, 89.1090, 89.1095, 89.1096

The amendments and new sections are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The amendment implements 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057.

§89.1011. Referral for Full and Individual Initial Evaluation [~~Comprehensive Assessment~~].

Referral of students for a full and individual initial evaluation for possible special education services shall be a part of the district's overall, regular education referral or screening system. Prior to referral, students experiencing difficulty in the regular classroom should be considered for all support services available to all students, such as tutorial, remedial, compensatory, and other services. This referral for a full and individual initial evaluation [~~assessment~~] may be initiated by school personnel, the student's parents or legal guardian, or another person involved in the education or care of the student.

§89.1015. Time Line for All Notices.

"Reasonable time" required for the written notice to parents under 34 Code of Federal Regulations (CFR), §300.503 [~~§300.504~~], is defined as at least five school days, unless the parents agree otherwise.

§89.1035. Age Ranges for Student Eligibility.

(a) Pursuant to state and federal law, services provided in accordance with this subchapter shall be available to all eligible students ages 3-21. Services will be made available to eligible students on their third birthday. Graduation with a regular high school diploma pursuant to §89.1070 of this title (relating to Graduation Requirements) terminates a student's eligibility to receive services in accordance with this subchapter. An eligible [~~A~~] student receiving special education services who is 21 [~~younger than 22~~] years of age on September 1 of a school [~~scholastic~~] year shall be eligible for services through the end of that school [~~scholastic~~] year or until graduation with a regular high school diploma pursuant to §89.1070 of this title, whichever comes first.

(b) In accordance with the Texas Education Code (TEC), §§29.003, 30.002(a), and 30.081, a free, appropriate, public education shall be available from birth to students with visual or auditory impairments.

§89.1040. Eligibility Criteria.

(a) Special education services. To be eligible to receive special education services, a student must be a "child with a disability," as

defined in 34 Code of Federal Regulations (CFR), §300.7(a), subject to the provisions of 34 CFR, §300.7(c), the Texas Education Code (TEC), §29.003, and this section. The provisions in this section specify criteria to be used in determining whether a student's condition meets one or more of the definitions in federal regulations or in state law.

(b) Eligibility determination. The determination of whether a student is eligible for special education and related services is made by the student's admission, review, and dismissal (ARD) committee. Any evaluation or re-evaluation of a student shall be conducted in accordance with 34 CFR, §§300.530-300.536. The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility must include the following:

(1) a licensed specialist in school psychology (LSSP), an educational diagnostician, or other appropriately certified or licensed practitioner with experience and training in the area of the disability, if the disability category is autism, emotional disturbance, mental retardation, multiple disabilities, a health impairment (if the underlying condition is attention deficit disorder or attention deficit hyperactivity disorder), a learning disability, or a traumatic brain injury; or

(2) a licensed or certified professional for a specific eligibility category defined in subsection (c) of this section.

(c) Eligibility definitions.

(1) Autism. A student with autism is one who has been determined to meet the criteria for autism as stated in 34 CFR, §300.7(c)(1). Students with pervasive developmental disorders are included under this category. The team's written report of evaluation shall include specific recommendations for behavioral interventions and strategies.

(2) Deaf-blindness. A student with deaf-blindness is one who has been determined to meet the criteria for deaf-blindness as stated in 34 CFR, §300.7(c)(2). In meeting the criteria stated in 34 CFR, §300.7(c)(2), a student with deaf-blindness is one who, based on the evaluations specified in subsections (d) and (m) of this section:

(A) meets the eligibility criteria for auditory impairment specified in subsection (c)(3) of this section and visual impairment specified in subsection (c)(12) of this section;

(B) meets the eligibility criteria for a student with a visual impairment and has a suspected hearing loss that cannot be demonstrated conclusively, but a speech/language therapist, a certified speech and language therapist, or a licensed speech language pathologist indicates there is no speech at an age when speech would normally be expected;

(C) has documented hearing and visual losses that, if considered individually, may not meet the requirements for auditory impairment or visual impairment, but the combination of such losses adversely affects the student's educational performance; or

(D) has a documented medical diagnosis of a progressive medical condition that will result in concomitant hearing and visual losses that, without special education intervention, will adversely affect the student's educational performance.

(3) Auditory impairment. A student with an auditory impairment is one who has been determined to meet the criteria for deafness as stated in 34 CFR, §300.7(c)(3), or for hearing impairment as stated in 34 CFR, §300.7(c)(5). The evaluation data reviewed by the multidisciplinary team in connection with the determination of a student's eligibility based on an auditory impairment must include an otological examination performed by an otologist or by a licensed medical doctor, with documentation that an otologist is not reasonably available. An audiological evaluation by a licensed audiologist shall also be conducted. The evaluation data shall include a description of the implications of the hearing loss for the student's hearing in a variety of circumstances with or without recommended amplification.

(4) Emotional disturbance. A student with an emotional disturbance is one who has been determined to meet the criteria for emotional disturbance as stated in 34 CFR, §300.7(c)(4). The written report of evaluation shall include specific recommendations for behavioral supports and interventions.

(5) Mental retardation. A student with mental retardation is one who has been determined to meet the criteria for mental retardation as stated in 34 CFR, §300.7(c)(6). In meeting the criteria stated in 34 CFR, §300.7(c)(6), a student with mental retardation is one who has been determined to be functioning at two or more standard deviations below the mean on individually administered scales of verbal ability, and either performance or nonverbal ability, and who concurrently exhibits deficits in adaptive behavior.

(6) Multiple disabilities.

(A) A student with multiple disabilities is one who has been determined to meet the criteria for multiple disabilities as stated in 34 CFR, §300.7(c)(7). In meeting the criteria stated in 34 CFR, §300.7(c)(7), a student with multiple disabilities is one who has a combination of disabilities defined in this section and who meets all of the following conditions:

(i) the student's disability is expected to continue indefinitely; and

(ii) the disabilities severely impair performance in two or more of the following areas:

(I) psychomotor skills;

(II) self-care skills;

(III) communication;

(IV) social and emotional development; or

(V) cognition.

(B) Students who have more than one of the disabilities defined in this section but who do not meet the criteria in subparagraph (A) of this paragraph shall not be classified or reported as having multiple disabilities.

(7) Orthopedic impairment. A student with an orthopedic impairment is one who has been determined to meet the criteria for orthopedic impairment as stated in 34 CFR, §300.7(c)(8). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on an orthopedic impairment must include a licensed physician.

(8) Other health impairment. A student with another health impairment is one who has been determined to meet the criteria for other health impairment as stated in 34 CFR, §300.7(c)(9). Except as provided in subsection (b)(1) of this section, the multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on another health impairment must include a licensed physician.

(9) Learning disability.

(A) A student with a learning disability is one who has been determined by a multidisciplinary team to meet the criteria for specific learning disability as stated in 34 CFR, §300.7(c)(10), and in whom the team has determined whether a severe discrepancy between achievement and intellectual ability exists in accordance with the provisions in 34 CFR, §§300.540-300.543. A severe discrepancy exists

when the student's assessed intellectual ability is above the mentally retarded range, but the student's assessed educational achievement in areas specified in 34 CFR, §300.541, is more than one standard deviation below the student's intellectual ability.

(B) If the multidisciplinary team cannot establish the existence of a severe discrepancy in accordance with subparagraph (A) of this paragraph because of the lack of appropriate evaluation instruments, or if the student does not meet the criteria in subparagraph (A) of this paragraph but the team believes a severe discrepancy exists, the team must document in its written report the areas identified under subparagraph (A) of this paragraph and the basis for determining that the student has a severe discrepancy. The report shall include a statement of the degree of the discrepancy between intellectual ability and achievement.

(10) Speech impairment. A student with a speech impairment is one who has been determined to meet the criteria for speech or language impairment as stated in 34 CFR, §300.7(c)(11). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a speech impairment must include a certified speech and hearing therapist, a certified speech and language therapist, or a licensed speech/language pathologist.

(11) Traumatic brain injury. A student with a traumatic brain injury is one who has been determined to meet the criteria for traumatic brain injury as stated in 34 CFR, §300.7(c)(12). The multidisciplinary team that collects or reviews evaluation data in connection with the determination of a student's eligibility based on a traumatic brain injury must include a licensed physician, in addition to the licensed or certified practitioners specified in subsection (b)(1) of this section.

(12) Visual impairment.

(A) A student with a visual impairment is one who has been determined to meet the criteria for visual impairment as stated in 34 CFR, §300.7(c)(13). The visual loss should be stated in exact measures of visual field and corrected visual acuity at a distance and at close range in each eye. The report should also include prognosis whenever possible. If exact measures cannot be obtained, the eye specialist must so state and provide best estimates. In meeting the criteria stated in 34 CFR, §300.7(c)(13), a student with a visual impairment is one who:

(i) has been determined by a licensed ophthalmologist or optometrist:

(I) to have no vision or to have a serious visual loss after correction; or

(II) to have a progressive medical condition that will result in no vision or a serious visual loss after correction.

(ii) has been determined by the following evaluations to have a need for special services:

(I) a functional vision evaluation by a professional certified in the education of students with visual impairments or a certified orientation and mobility instructor. The evaluation must include the performance of tasks in a variety of environments requiring the use of both near and distance vision and recommendations concerning the need for a clinical low vision evaluation and an orientation and mobility evaluation; and

(II) a learning media assessment by a professional certified in the education of students with visual impairments. The learning media assessment must include recommendations concerning which specific visual, tactual, and/or auditory learning media are appropriate for the student and whether or not there is a need for ongoing evaluation in this area.

(B) A student with a visual impairment is functionally blind if, based on the preceding evaluations, the student will use tactual media (which includes Braille) as a primary tool for learning to be able to communicate in both reading and writing at the same level of proficiency as other students of comparable ability.

(13) Noncategorical. A student aged 3-9 may be eligible for special education and related services and reported using the term "noncategorical" if the following criteria are met:

(A) the student has been determined to meet the criteria for mental retardation, emotional disturbance, a specific learning disability, or autism; or

(B) the student does not appear to meet the independent criteria for eligibility under the categories mental retardation, emotional disturbance, a specific learning disability, or autism; however, the evaluation data establish a belief that the student meets the eligibility requirements for one or more of such categories.

§89.1045. Rights of Parents to Request Admission, Review, and Dismissal (ARD) Committee Meetings.

A parent may request that the school district convene an admission, review, and dismissal (ARD) committee meeting at any mutually agreeable time to address specific concerns that the parent may have about his or her child's special education services. The school district must respond to the parent's request for an ARD committee meeting within a reasonable period of time by holding the requested meeting, addressing and resolving the parent's concerns through an alternative process, or requesting assistance through the Texas Education Agency's mediation process.

§89.1047. Procedures for Surrogate and Foster Parents.

(a) An individual assigned to act as a surrogate parent for a student with a disability, in accordance with 34 Code of Federal Regulations (CFR), §300.515, relating to surrogate parents, must comply with the requirements specified in Texas Education Code (TEC), §29.001(10).

(1) Pursuant to TEC, §29.001(10)(A), an individual assigned to act as a surrogate parent must complete a training program in which the individual is provided with an explanation of the provisions of federal and state laws, rules, and regulations relating to:

(A) the identification of a student with a disability;

(B) the collection of evaluation and re-evaluation data relating to a student with a disability;

(C) the admission, review, and dismissal (ARD) committee process;

(D) the development of an individualized education program (IEP) and, for a student who is at least 16 years of age, an individual transition plan (ITP);

(E) the determination of least restrictive environment;

(F) the implementation of an IEP;

(G) the procedural rights and safeguards available under 34 CFR, §§300.403, 300.500-300.529, 300.560-300.577, and 300.660-300.662, relating to the issues described in 34 CFR, §300.504(b); and

(H) the sources that the surrogate parent may contact to obtain assistance in understanding the provisions of federal and state laws, rules, and regulations relating to students with disabilities.

(2) The training program described in subsection (a)(1) of this section must be provided in the native language or other mode of communication used by the individual who is to serve as a surrogate parent.

(3) The individual assigned to act as a surrogate parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the effective date of this rule or the date of initial assignment as a surrogate parent, whichever comes later. Once an individual has completed a training program conducted or provided by or through the Texas Department of Protective and Regulatory Services (PRS), a school district, an education service center, or any entity that receives federal funds to provide Individuals with Disabilities Education Act (IDEA) training to parents, the individual shall not be required by any school district to complete additional training in order to continue serving as the student's surrogate parent or to serve as the surrogate parent for other students with disabilities. School districts may provide ongoing or additional training to surrogate parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as a surrogate parent on the grounds that the individual has not been trained.

(4) A school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for individuals serving as surrogate parents as of the effective date of this rule. Thereafter, a school district should provide or arrange for the provision of the training program described in subsection (a)(1) prior to assigning an individual to act as a surrogate parent but no later than 90 calendar days after assignment.

(b) A foster parent may act as a parent of a child with a disability, in accordance with 34 CFR, §300.20, relating to the definition of parent, if he/she complies with the requirements of TEC, §29.015(b), relating to foster parents, including the completion of the training program described in subsection(a)(1) of this section.

(1) The foster parent must complete the training program described in subsection (a)(1) of this section within 90 calendar days after the effective date of this rule or the date of initial assignment as the parent, whichever comes later. Once a foster parent has completed a training program conducted or provided by the PRS, a school district, an education service center, or any entity that receives federal funds to provide IDEA training to parents, the foster parent shall not be required by any school district to complete additional training in order to continue serving as his/her child's surrogate parent or parent or to serve as the surrogate parent or parent for other students with disabilities. School districts may provide ongoing or additional training to foster parents and/or parents; however, a district cannot deny an individual who has received the training as described in subsection (a)(1) of this section from serving as the parent on the grounds that the individual has not been trained.

(2) A school district shall provide, or arrange for the provision of, the training program described in subsection (a)(1) of this section, within 90 calendar days after the effective date of this rule for foster parents who are serving as parents as of the effective date of this rule. Thereafter, a school district should provide or arrange for the provision of the training program described in subsection (a)(1) prior to assigning a foster parent to act as a parent but no later than 90 calendar days after assignment.

(c) Each school district or shared services arrangement shall develop and implement procedures for conducting an analysis of whether a foster parent or potential surrogate parent has an interest that conflicts with the interests of his/her child. A foster parent in a home which is verified by the PRS or a child-placing agency shall not be deemed to have a financial conflict of interest by virtue of serving as the foster parent in that home. These homes include, but are not limited to, basic, habilitative, primary medical, or therapeutic foster or foster group homes. In addition, issues concerning quality of care of the child do not constitute a conflict of interest. Concerns regarding quality of care of the child should be communicated, and may be statutorily required to be reported, to PRS.

(d) If a school district denies a foster parent the right to serve as a surrogate parent or parent, the school district must provide the foster parent with written notice of such denial within seven calendar days after the date on which the decision is made. The written notice shall:

(1) specify the reason(s) the foster parent is being denied the right to serve as the surrogate parent or parent (the notice must specifically explain the interests of the foster parent that conflict with the interests of his/her child); and

(2) inform the foster parent of his/her right to file a complaint with the Texas Education Agency in accordance with 34 CFR, §§300.660-300.662, relating to complaint procedures.

§89.1049. Parental Rights Regarding Adult Students.

The Individuals with Disabilities Education Act (IDEA) and applicable federal regulations provide that a state may provide that when a student with a disability reaches the age of 18, the rights accorded to the student's parent under IDEA, Part B, transfer to the student. Current law in Texas does not appear to address the transfer of parental rights under IDEA to an adult student. Therefore, unless parental rights have been terminated by judicial decree, parental rights under IDEA shall remain with the parent of a student with a disability even after the student is 18 years of age.

§89.1050. The Admission, Review, and Dismissal (ARD) Committee.

(a) Each school district shall establish an admission, review, and dismissal (ARD) committee for each eligible student with a disability and for each student for whom a full and individual initial evaluation is conducted pursuant to §89.1011 of this title (relating to Referral for Full and Individual Initial Evaluation). The ARD committee shall be the individualized education program (IEP) team defined in federal law and regulations, including, specifically, 34 Code of Federal Regulations (CFR), §300.344. The ARD committee shall be responsible for all of the functions for which the IEP team is responsible under federal law and regulations and for which the ARD committee is responsible under state law, including, specifically, the following:

(1) 34 CFR, §§300.340-300.349, and Texas Education Code (TEC), §29.005 (Individualized Education Program);

(2) 34 CFR, §§300.400-300.402 (relating to placement of eligible students in private schools by a school district);

(3) 34 CFR, §§300.452, 300.455, and 300.456 (relating to the development and implementation of service plans for eligible students in private school who have been designated to receive special education and related services);

(4) 34 CFR, §§300.520, 300.522, and 300.523, and TEC, §37.004 (Placement of Students with Disabilities);

(5) 34 CFR, §§300.532-300.536 (relating to evaluations, re-evaluations, and determination of eligibility);

(6) 34 CFR, §§300.550-300.553 (relating to least restrictive environment);

(7) TEC, §28.006 (Reading Diagnosis);

(8) TEC, §28.0211 (Satisfactory Performance on Assessment Instruments Required; Accelerated Instruction);

(9) TEC, Chapter 29, Subchapter I (Programs for Students Who Are Deaf or Hard of Hearing);

(10) TEC, §30.002 (Education of Children with Visual Impairments);

(11) TEC, §30.003 (Support of Students Enrolled in the Texas School for the Blind and Visually Impaired or Texas School for the Deaf);

(12) TEC, §33.081 (Extracurricular Activities);

(13) TEC, Chapter 39, Subchapter B (Assessment of Academic Skills); and

(14) TEC, §42.151 (Special Education).

(b) For a child from birth through two years of age with visual and/or auditory impairments, an individualized family services plan (IFSP) meeting must be held in place of an ARD committee meeting in accordance with 34 CFR, §§303.340-303.346, and the memorandum of understanding between the Texas Education Agency (TEA) and Texas Interagency Council on Early Childhood Intervention.

(c) The special education teacher or special education provider that participates in the ARD committee meeting in accordance with 34 CFR, §300.344(a)(3), must be certified in the child's suspected areas of disability. When a specific certification is not required to serve certain disability categories, then the special education teacher or special education provider must be qualified to provide the educational services that the child may need. Districts should refer to §89.1131 of this title (relating to Qualifications of Special Education, Related Service, and Paraprofessional Personnel) to ensure that appropriate teachers and/or service providers are present and participate at each ARD committee meeting.

(d) The ARD committee shall make its decisions regarding students referred for a full and individual initial evaluation within 30 calendar days from the date of the completion of the written full and individual initial evaluation report. If the 30th day falls during the summer and school is not in session, the ARD committee shall have until the first day of classes in the fall to finalize decisions concerning placement and the IEP, unless the full and individual initial evaluation indicates that the student will need extended year services during that summer.

(e) The written report of the ARD committee shall document the decisions of the committee with respect to issues discussed at the meeting. The report shall include the date, names, positions, and signatures of the members participating in each meeting in accordance with 34 CFR, §§300.344, 300.345, 300.348, and 300.349. The report shall also indicate each member's agreement or disagreement with the committee's decisions. In the event TEC, §29.005(d), applies, the district shall provide a written or audiotaped copy of the student's IEP, as defined in 34 CFR, §300.346 and §300.347.

(f) For a student who is new to a school district, the ARD committee may meet when the student enrolls and the parents verify that the student was receiving special education services in the previous school district, or the previous school district verifies in writing or by telephone that the student was receiving special education services. Special education services that are provided prior to receipt of valid evaluation data from the previous school district or collection of new evaluation data are temporary and contingent upon either receipt of valid evaluation data from the previous school district or the collection of new evaluation data. In any event, an ARD committee meeting must be held within 30 school days from the date of the student's enrollment in the district to finalize or develop an IEP based on the evaluation data. The student's current and previous school districts are not required to obtain parental consent before requesting or sending the student's special education records if the disclosure is conducted in accordance with 34 CFR, §99.31(a)(2) and §99.34. In accordance with TEC, §25.002, the school district in which the student was previously enrolled shall furnish the new school district with a copy of the student's records, including the child's special education records, not later than the 30th calendar day after the student was enrolled in the new school district.

(g) All disciplinary actions regarding students with disabilities shall be determined in accordance with 34 CFR, §§300.121 and 300.519-300.529 (relating to disciplinary actions and procedures) and the TEC, Chapter 37, Subchapter A (Alternative Settings for Behavior Management).

(h) All members of the ARD committee shall have the opportunity to participate in a collaborative manner in developing the IEP. A decision of the committee concerning required elements of the IEP shall be made by mutual agreement of the required members if possible. The committee may agree to an annual IEP or an IEP of shorter duration.

(1) When mutual agreement about all required elements of the IEP is not achieved, the party (the parents or adult student) who disagrees shall be offered a single opportunity to have the committee recess for a period of time not to exceed ten school days. This recess is not required when the student's presence on the campus presents a danger of physical harm to the student or others or when the student has committed an expellable offense or an offense which may lead to a placement in an alternative education program (AEP). The requirements of this subsection (h) do not prohibit the members of the ARD committee from recessing an ARD committee meeting for reasons other than the failure of the parents and the school district from reaching mutual agreement about all required elements of an IEP.

(2) During the recess the committee members shall consider alternatives, gather additional data, prepare further documentation, and/or obtain additional resource persons which may assist in enabling the ARD committee to reach mutual agreement.

(3) The date, time, and place for continuing the ARD committee meeting shall be determined by mutual agreement prior to the recess.

(4) If a ten-day recess is implemented as provided in paragraph (1) of this subsection and the ARD committee still cannot reach mutual agreement, the district shall implement the IEP which it has determined to be appropriate for the student.

(5) When mutual agreement is not reached, a written statement of the basis for the disagreement shall be included in the IEP. The members who disagree shall be offered the opportunity to write their own statements.

(6) When a district implements an IEP with which the parents disagree or the adult student disagrees, the district shall provide prior written notice to the parents or adult student as required in 34 CFR, §300.503.

(7) Parents shall have the right to file a complaint, request mediation, or request a due process hearing at any point when they disagree with decisions of the ARD committee.

§89.1055. Content of the Individualized Education Program [~~Individual Educational Plan~~] (IEP).

(a) The individualized education program [~~individual educational plan~~] (IEP) developed by the admission, review, and dismissal (ARD) committee for each student with a disability shall comply with [~~include the following information in addition to~~] the requirements of

34 Code of Federal Regulations (CFR), §300.346 and §300.347, and Part 300, Appendix A. [~~C:~~]

[~~(1) information to allow for determining the student's eligibility for participation in extracurricular activities;~~]

[~~(2) a statement addressing nonexemption, modification/accommodation, or exemption from some or all of the basic skills assessment instruments, as appropriate. Modifications/accommodation of regular classroom procedures which are provided for students by the local district as specified in the student's IEP shall be provided during the testing process in accordance with §101.3 of this title (relating to Testing Accommodations and Exemptions); and~~]

[~~(3) goals and objectives shall be specified if extended year services are included in the IEP.~~]

(b) If the ARD committee determines that the student is in need of extended school year (ESY) services, as described in §89.1065 of this title (relating to Extended School Year Services (ESY Services)), then the IEP must also include goals and objectives for ESY services.

(c) [~~(b)~~] For students with visual impairments, from birth through 21 years of age, the IEP or individualized family services plan (IFSP) shall also meet the requirements of Texas Education Code [~~(TEC)~~], §30.002(e).

(d) [~~(c)~~] For students with autism/pervasive developmental disorders, information about the following shall be considered and, when needed, addressed in the IEP:

(1) extended educational programming;

(2) daily schedules reflecting minimal unstructured time;

(3) in-home training or viable alternatives;

(4) prioritized behavioral objectives;

(5) prevocational and vocational needs of students 12 years of age or older;

(6) parent training; and

(7) suitable staff-to-students ratio.

(e) [~~(d)~~] If the ARD committee determines that services are not needed in one or more of the areas specified in subsection (d)(1)-(7) [~~(c)(1)-(7)~~] of this section, the IEP must include a statement to that effect and the basis upon which the determination was made.

§89.1056. Transfer of Assistive Technology Devices.

(a) Unless otherwise specifically defined in this section, the terms used in this section shall have the meanings ascribed to such terms in Texas Education Code (TEC), §30.0015, (Transfer of Assistive Technology Devices).

(b) A transfer of an assistive technology device (ATD) pursuant to TEC, §30.0015, shall be in accordance with a transfer agreement which incorporates the standards described in TEC, §30.0015(c), and which includes, specifically, the following.

(1) The transferor and transferee must represent and agree that the terms of the transfer are based on the fair market value of the ATD, determined in accordance with generally accepted accounting principles.

(2) The informed consent of the parent of the student with a disability for whom the ATD is being transferred must be obtained before the transfer of an ATD pursuant to TEC, §30.0015. The procedures employed by a school district in obtaining such informed consent shall be consistent with the procedures employed by the district to obtain parental consent under 34 Code of Federal Regulations (CFR), §300.505. If the student has the legal capacity to enter into a contract, the informed consent may be obtained from the student. Consistent with 34 CFR, §300.505(c), informed parental or adult student consent need not be obtained if the school district can demonstrate that it has taken reasonable measures to obtain that consent, and the student's parent or the adult student has failed to respond. To meet the reasonable measures requirement, the school district must use procedures consistent with those described in 34 CFR, §300.345(d).

(3) If the transfer is a sale, then the sale of the ATD shall be evidenced by a "Uniform Transfer Agreement" (UTA) which includes the following:

(A) the names of the transferor and the transferee (which may be any individual or entity identified in TEC, §30.0015(b));

(B) the date of the transfer;

(C) a description of the ATD being transferred;

(D) the terms of the transfer (including the transfer of warranties, to the extent applicable); and

(E) the signatures of authorized representatives of both the transferor and the transferee.

(c) The Texas Education Agency shall annually disseminate to school districts the standards for a school district's transfer of an ATD pursuant to TEC, §30.0015.

(d) Nothing in this section or in TEC, §30.0015, shall:

(1) alter any existing obligation under federal or state law to provide ATDs to students with disabilities;

(2) require a school district to transfer an ATD to any person or entity;

(3) limit a school district's right to sell, lease, loan, or otherwise convey or dispose of property as authorized by federal or state laws, rules, or regulations; or

(4) authorize any transfer of an ATD that is inconsistent with any restriction on transferability imposed by the manufacturer or developer of the ATD or applicable federal or state laws, rules, or regulations.

§89.1060. Definitions of Certain Related Services.

In addition to the specific related services defined in 34 Code of Federal Regulations (CFR), §300.24, related services include interpreting services for students who are deaf. Interpreting services include interpreting/transliterating receptively and expressively for persons who are deaf or hard of hearing.

§89.1065. Extended School Year Services (ESY Services) [~~(EYS)~~].

Extended school year (ESY) services [~~(EYS)~~] are defined as individualized instructional programs beyond the regular school year for eligible students with disabilities [~~who are enrolled in a school district's special education program~~].

(1) The need for ESY services [~~EYS~~] must be determined on an individual student basis by the admission, review, and dismissal (ARD) committee in accordance with 34 Code of Federal Regulations (CFR), §300.309, and the provisions of this section. In determining the need for and in providing ESY services, a school district may not: [~~.~~]

(A) limit ESY services to particular categories of disability; or

(B) unilaterally limit the type, amount, or duration of ESY services.

(2) The need for ESY services [~~EYS~~] must be documented from formal and/or informal evaluations provided by the district or the parents. The documentation shall demonstrate that in one or more critical areas addressed in the current individualized education program [~~individual educational plan~~] (IEP) objectives, the student has exhibited, or reasonably may be expected to exhibit, severe or substantial regression that cannot be recouped within a reasonable [~~time~~] period of time. Severe or substantial regression means [~~shall mean~~] that the student has been, or will be, unable to maintain one or more acquired critical skills in [~~because of~~] the absence of ESY services [~~EYS~~].

(3) The reasonable [~~time~~] period of time for recoupment of acquired critical skills shall be determined on the basis of needs identified in each student's IEP. If the loss of acquired critical skills would be particularly severe or substantial, or if such loss results, or reasonably may be expected to result, in immediate physical harm to the student or to others, ESY services [~~EYS~~] may be justified without consideration of the [~~time~~] period of time for recoupment of such skills. In any case, the [~~time~~] period of time for recoupment shall not exceed eight weeks.

(4) A skill is critical when the loss of that skill results, or is reasonably expected to result, in any of the following [~~unplanned~~] occurrences during the first eight weeks of the next regular school year:

(A) placement in a more restrictive instructional arrangement;

(B) significant loss of skills necessary for the student to appropriately progress in the general curriculum and appropriately advance toward achieving the goals set out in the student's IEP;

(C) [~~(B)~~] significant loss of self-sufficiency in self-help skill areas as evidenced by an increase in the number of direct service staff and/or amount of time required to provide special education or related services;

(D) [~~(C)~~] loss of access to community-based independent living skills instruction or an independent living environment provided by noneducational sources as a result of regression in skills; or

(E) [~~(D)~~] loss of access to on-the-job training or productive employment as a result of regression in skills.

(5) If the district does not propose ESY services [~~EYS~~] for discussion at the annual review of a student's IEP, the parent may request that the ARD committee discuss ESY services [~~EYS~~] pursuant to 34 CFR, §300.344 [~~Code of Federal Regulations (CFR), §300.504 and §300.505~~].

(6) If a student for whom ESY services were [~~EYS was~~]considered and rejected loses critical skills because of the decision not to provide ESY services [~~EYS~~], and if those skills are not regained after the reasonable [~~time~~] period of time for recoupment, the ARD committee shall reconsider the current IEP if the student's loss of critical skills interferes with the implementation of the student's IEP.

(7) For students enrolling in a district during the school year, information obtained from the prior school district as well as information collected during the current year may be used to determine the need for ESY services [~~EYS~~].

(8) The provision of ESY services [~~EYS~~] is limited to the educational needs of the student and shall not supplant or limit the responsibility of other public agencies to continue to provide care and treatment services pursuant to policy or practice, even when those services are similar to, or the same as, the services addressed in the student's IEP. No student shall be denied ESY services [~~EYS~~] because the [~~that~~] student receives care and treatment services under the auspices of other agencies.

(9) Districts are not eligible for reimbursement for ESY services [~~EYS~~] provided to students for reasons other than those set forth in this section.

§89.1070. Graduation Requirements.

(a) Graduation with a regular high school diploma terminates a student's eligibility for special education services under this subchapter and Part B of the Individuals with Disabilities Education Act (IDEA), 20 United States Code, §§14.01 et seq. In addition, as provided in Texas Education Code (TEC), §42.003(a), graduation with a regular high school diploma terminates a student's entitlement to the benefits of the Foundation School Program.

(b) A student receiving special education services may graduate and be awarded a high school diploma only if:

(1) the student has satisfactorily completed the minimum academic credit requirements for graduation applicable to students in regular education, including satisfactory performance on the exit level assessment instrument; or

(2) the student's admission, review, and dismissal (ARD) committee has determined that the student has successfully completed the student's individualized education program (IEP), including the district's minimum credit requirements for students without disabilities. Successful completion of an IEP occurs when one of the following conditions has been met:

(A) full-time employment, based on the student's abilities and local employment opportunities, in addition to sufficient self-help skills to enable the student to maintain the employment without direct and ongoing educational support of the local school district;

(B) demonstrated mastery of specific employability skills and self-help skills which do not require direct ongoing educational support of the local school district; or

(C) access to services which are not within the legal responsibility of public education, or employment or educational options for which the student has been prepared by the academic program.

(c) When considering graduation under subsection (b)(2) of this section, the ARD committee shall, when appropriate, seek in writing and consider written recommendations from appropriate adult service agencies and the views of the parent and, when appropriate, the student.

(d) Employability and self-help skills referenced under subsection (b)(2) of this section are those skills directly related to the preparation of students for employment, including general skills necessary to obtain or retain employment.

(e) Students with disabilities who are eligible to take the exit level assessment instrument but have not performed satisfactorily are eligible for instruction in accordance with the TEC, §39.024.

(f) A school district may award a certificate, or some other type of credential, to a student who has not met the requirement of subsection (b) of this section and who is therefore not eligible to graduate and receive a high school diploma. A school district may allow a student who receives a certificate, or some other type of credential, to participate in a graduation ceremony with students receiving high school diplomas. Receipt of a certificate or other type of credential does not terminate a student's eligibility for special education services under this subchapter and IDEA, Part B, nor does it terminate a student's entitlement to the benefits of the Foundation School Program under TEC, §42.003(a).

§89.1075. General Program Requirements and Local District Procedures.

(a) Each school district shall maintain an eligibility folder for [~~on~~] each student receiving special education services, in addition to the student's [~~student~~] cumulative record. The eligibility folder must include, but need not be limited to: copies of referral data; documentation of notices and consents; evaluation [~~assessment~~] reports and supporting data; admission, review, and dismissal (ARD) committee reports [~~deliberations~~]; and the student's individualized education programs (IEPs) [~~individual educational plan (IEP)~~].

(b) For school districts providing special education services to students with visual impairments, there shall be written procedures as required in the Texas Education Code (TEC), §30.002(c)(10).

[~~(c) Each school district shall provide parents of students receiving special education services written reports of the students' progress on the same timely basis as the reports provided to students in regular education.~~]

(c) [~~(d)~~] Each school district shall have procedures to ensure that each teacher involved in a student's instruction has the opportunity to provide input and request assistance regarding the implementation of the student's IEP. These procedures must include a method for a student's regular or special education teachers to submit requests for further consideration of the student's IEP or its implementation. In response to this request, the district's procedures shall include a method for the district to determine whether further consideration is necessary and whether this consideration will be informal or will require an ARD committee meeting. If the district determines that an ARD committee meeting is necessary, the student's current regular and special education teachers shall have an opportunity to provide input. The school district shall also ensure that each teacher who provides instruction to a student with disabilities receives relevant sections of the student's current IEP, such as goals and objectives, modifications/accommodations, and adaptations.

(d) [~~(e)~~] Students with disabilities shall have available an instructional day commensurate with that of students without disabilities. The ARD committee shall determine the appropriate instructional setting and length of day for each student, and these shall be specified in the student's IEP.

(e) School districts that jointly operate their special education programs as a shared services arrangement, in accordance with TEC, §29.007, shall do so in accordance with procedures developed by the Texas Education Agency (TEA).

(f) School districts that contract for services from non-public day schools shall do so in accordance with 34 Code of Federal Regulations, §300.402, and procedures developed by the TEA.

§89.1076. Interventions and Sanctions.

The Texas Education Agency (TEA) shall establish and implement a system of interventions and sanctions, in accordance with the Individuals with Disabilities Education Act, 20 USC, §§1400 et seq., Texas Education Code (TEC), §29.010, and TEC, Chapter 39, as necessary to ensure compliance with federal and state requirements regarding the implementation of special education and related services. In accordance with TEC, §39.131(a), the TEA may combine any intervention and sanction. The system of interventions and sanctions will include, but not be limited to, the following:

(1) on-site review for failure to meet compliance requirements;

(2) required fiscal audit of specific program(s) and/or of the district, paid for by the district;

(3) required submission of corrective action(s), including compensatory services, paid for by the district;

(4) required technical assistance from the education service center, paid for by the district;

(5) public release of compliance review findings;

(6) special investigation and/or follow-up verification visits;

(7) required public hearing conducted by the local school board of trustees;

(8) assignment of a special purpose monitor, master, or management team, paid for by the district;

(9) hearing before the commissioner of education or designee;

(10) reduction in payment or withholding of funds; and/or

(11) lowering of the special education compliance status and/or the accreditation rating of the district.

§89.1085. Referral for the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf Services.

(a) A student's admission, review, and dismissal (ARD) committee may place the student at the Texas School for the Blind and Visually Impaired (TSBVI) or the Texas School for the Deaf (TSD) in accordance with the provisions of 34 Code of Federal Regulations (CFR), Part 300, the Texas Education Code (TEC), including, specifically, §§30.021, 30.051, and 30.057, and the applicable rules of this subchapter.

(b) In the event that a student is placed by his or her ARD committee at either the TSBVI or the TSD, the student's "resident school district," as defined in subsection (e) of this section, shall be responsible for assuring that a free appropriate public education (FAPE) is provided to the student at the TSBVI or the TSD, as applicable, in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §§1400 et seq., 34 CFR, Part 300, state statutes, and rules of the State Board of Education (SBOE) and the commissioner of education. If representatives of the resident school district and representatives of the TSBVI or the TSD disagree, as members of a student's ARD committee, with respect to a recommendation by one or more members of the student's ARD committee that the student be evaluated for placement, initially placed, or continued to be placed at the TSBVI or TSD, as applicable, the representatives of the resident school district and the TSBVI or TSD, as applicable, may seek resolution through the mediation procedures adopted by the Texas Education Agency or through any due process hearing to which the resident school district or the TSBVI or the TSD are entitled under the IDEA, 20 USC, §§1401, et seq.

(c) When a student's ARD committee places the student at the TSBVI or the TSD, the student's resident school district shall comply with the following requirements.

(1) For each student, the resident school district shall list those services in the student's individualized education program (IEP) which the district cannot appropriately provide in a local program and which the TSBVI or the TSD can appropriately provide.

(2) The district may make an on-site visit to verify that the TSBVI or the TSD can and will offer the services listed in the individual student's IEP and to ensure that the school offers an appropriate educational program for the student.

(3) For each student, the resident school district shall include in the student's IEP the criteria and estimated time lines for returning the student to the resident school district.

(d) In addition to the provisions of subsections (a)-(c) of this section, and as provided in TEC, §30.057, the TSD shall provide services in accordance with TEC, §30.051, to any eligible student with a disability for whom the TSD is an appropriate placement if the student has been referred for admission by the student's parent or legal guardian, a person with legal authority to act in place of the parent or legal guardian, or the student, if the student is age 18 or older, at any time during the school year if the referring person chooses the TSD as the appropriate placement for the student rather than placement in the student's resident school district or regional program determined by the student's ARD committee. For students placed at the TSD pursuant to this subsection, the TSD shall be responsible for assuring that a FAPE is provided to the student at the TSD, in accordance with IDEA, 20 USC, §§1401 et seq., 34 CFR, Part 300, state statutes, and rules of the SBOE and the commissioner of education.

(e) For purposes of this section and §89.1090 of this title (relating to Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf), the "resident school district" is the school district in which the student would be enrolled under TEC, §25.001, if the student were not placed at the TSBVI or the TSD.

§89.1090. Transportation of Students Placed in a Residential Setting, Including the Texas School for the Blind and Visually Impaired and the Texas School for the Deaf.

For each student [~~students~~] placed in a residential setting by the student's [~~based upon local school district~~] admission, review, and dismissal (ARD) committee [~~recommendations~~], including those students placed in the Texas School for the Blind and Visually Impaired TSBVI and the Texas School for the Deaf TSD, the resident school district shall be responsible for transportation at the beginning and end of the term and for regularly scheduled school holidays when students are expected to leave the residential campus. The resident school district is [~~School districts are~~] not responsible for transportation costs for students placed in residential settings by their parents. Transportation costs shall not exceed state approved per diem and mileage rates unless excess costs [~~charges~~] can be justified and documented. Transportation shall be arranged using the most cost efficient means. When [~~Where~~] it is necessary for the safety of the student [~~child~~], as determined by the ARD committee, for an adult designated by the ARD committee to accompany the student, round-trip transportation for that adult shall also be provided. The resident school district and the residential facility shall coordinate to ensure that students are transported safely, including the periods of departure and arrival.

§89.1095. Provision of Services for Students Placed by their [~~Their~~] Parents in Private Schools.

(a) This section will expire on June 30, 2001, and shall be superseded by §89.1096 of this title (relating to Provision of Services for Students Placed by their Parents in Private Schools or Facilities), beginning July 1, 2001.

(b) [~~(a)~~] When a student with disabilities who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer to the student a free, appropriate, public education. If the district determines that it can, the district is not responsible for providing educational or related services to the student until such time as the parents choose to enroll the child in the public school full-time or request services under the dual enrollment rule in subsection (g) [~~(f)~~] of this section.

(c) [~~(b)~~] All state requirements concerning referral, assessment, and determination of eligibility are applicable to students placed by their parents in private schools once the students have been referred to the local school district. All state requirements concerning special education services are applicable to students admitted under the dual enrollment rule in subsection (g) [~~(f)~~] of this section.

(d) [~~(c)~~] School districts shall use their established procedures and forms for the referral of students from private schools.

(e) [~~(d)~~] To the maximum extent possible, the district shall use referral and assessment information from the private schools' records in order to avoid unnecessary duplication of effort or services.

(f) [~~(e)~~] The district shall provide to private school personnel the opportunity to participate in, and provide information for, the district's ARD committee deliberations when the educational needs of private school students are being considered.

(g) [~~(f)~~] If the ARD committee determines that a private school student is eligible for, and in need of, special education instruction or related services or both, the parent may choose to enroll the student full-time in the public school. If the parent does not choose to do this, the school district shall make the special education services available only on the basis of dual enrollment. Based on the services and amount of time needed to provide those services, as set forth in each student's individual educational plan (IEP), when parents choose to enroll a child under the dual enrollment provision, the school district shall use one of the following arrangements for dual enrollment:

(1) enroll the student for at least four consecutive hours per day and count the student eligible for full state average daily attendance (ADA), for contact hours based on the instructional arrangement in which the student is served, and for full federal funding;

(2) enroll the student for at least two consecutive hours per day and count the student eligible for one-half state ADA, for contact hours based on the instructional arrangement in which the student is served, and for full federal funding; or

(3) enroll the student for any amount of time needed less than two hours per day and count the student eligible for full federal funding, but not for state ADA and for contact hours.

(h) [~~(g)~~] The location and procedures for delivery of the instructional or related services or both specified in the IEP shall be determined based on the requirements concerning placement in the least restrictive environment and the policies and procedures of the local district.

(i) [~~(h)~~] For students served under the provisions of this section, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be equivalent to those provided for students enrolled only in the public school and shall remain the property of the school district.

(j) [~~(i)~~] Students placed in a private school by parent choice shall not be eligible for state funded transportation services. The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the instruction or related service set forth in the IEP.

§89.1096. Provision of Services for Students Placed by their Parents in Private Schools or Facilities.

(a) The provisions of this section shall be implemented beginning July 1, 2001, and at that time shall supersede §89.1095 of this title (relating to Provision of Services for Students Placed by their Parents in Private Schools).

(b) Except as specifically provided in this section, in accordance with 34 Code of Federal Regulations (CFR), §300.454, no eligible student who has been placed by his or her parent(s) in a private school or facility has an individual right to receive some or all of the special education and related services that the student would receive if he or she were enrolled in a public school district. Except as specifically set forth in this section, a school district's obligations with respect to students placed by their parents in private schools are governed by 34 CFR, §§300.450-300.462.

(c) When a student with a disability who has been placed by his or her parents directly in a private school or facility is referred to the local school district, the local district shall convene an admission, review, and dismissal (ARD) committee meeting to determine whether the district can offer the student a free appropriate public education (FAPE). If the district determines that it can offer a FAPE to the student, the district is not responsible for providing educational services to the student, except as provided in 34 CFR, §§300.450-300.462 or subsection (d) of this section, until such time as the parents choose to enroll the student in public school full-time.

(d) Parents of an eligible student ages 3 or 4 shall have the right to "dual enroll" their student in both the public school and the private school beginning on the student's third birthday and continuing until the end of the school year in which the student turns five, subject to the following.

(1) The student's ARD committee shall develop an individualized education program (IEP) designed to provide the student with a FAPE in the least restrictive environment appropriate for the student.

(2) From the IEP, the parent and the district shall determine which special education and/or related services will be provided to the student and the location where those services will be provided, based on the requirements concerning placement in the least restrictive environment set forth in 34 CFR, §§300.550-300.553, and the policies and procedures of the district.

(3) For students served under the provisions of this subsection, the school district shall be responsible for the employment and supervision of the personnel providing the service, providing the needed instructional materials, and maintaining pupil accounting records. Materials and services provided shall be consistent with those provided for students enrolled only in the public school and shall remain the property of the school district.

(e) The school district shall provide special transportation with federal funds only when the ARD committee determines that the condition of the student warrants the service in order for the student to receive the special education and related services (if any) set forth in the IEP.

(f) Complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (d) of this section may be filed with the Texas Education Agency under the procedures in 34 CFR, §§300.660-300.662. The procedures in 34 CFR, §§300.504-300.515 (relating to due process hearings) do not apply to complaints regarding the implementation of the components of the student's IEP that have been selected by the parent and the district under subsection (d).

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 August 7, 2000.

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Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

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19 TAC §§89.1020, 89.1025, 89.1030, 89.1040, 89.1045, 89.1050, 89.1060, 89.1070, 89.1085, 89.1105

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

The repeals are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The repeals implement 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, 29.005, 29.015, 30.0015, and 30.057.

§89.1020. Written Notice to Parent Before Assessment.
§89.1025. Consent for Assessment.
§89.1030. Comprehensive Individual Assessment.
§89.1040. Eligibility Criteria.
§89.1045. Notice to Parents for Admission, Review, and Dismissal (ARD) Committee Meetings.
§89.1050. The Admission, Review, and Dismissal (ARD) Committee.
§89.1060. Definitions of Certain Related Services.
§89.1070. Graduation Requirements.
§89.1085. Referral for Texas School for the Blind and Visually Impaired and Texas School for the Deaf Services.
§89.1105. Memorandum of Understanding Relating to School-Age Residents of Intermediate Care Facilities for the Mentally Retarded.

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 August 7, 2000.

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Criss Cloudt

Associate Commissioner, Policy Planning and Research

Texas Education Agency

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For further information, please call: (512) 463-9701

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DIVISION 4. SPECIAL EDUCATION FUNDING

19 TAC §89.1121, §89.1125

The amendments are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The amendments implement 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, and 29.005.

§89.1121. Distribution of State Funds.

(a) Procedures for counting the average daily attendance (ADA) of students receiving special education services in various instructional settings shall be developed by the commissioner of education and included in the daily register for pupil attendance accounting.

(b) State special education funds shall be distributed to school districts on the basis of ADA of full-time equivalents of eligible students served in accordance with §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes).

(c) The special education attendance shall be converted to contact hours by instructional arrangement and then to full-time equivalents. The full-time equivalent for each instructional arrangement is multiplied by the school district's adjusted basic allotment and then multiplied by the weight for the instructional arrangement as prescribed in the Texas Education Code (TEC), §42.151(a). Contact hours for any one student receiving special education services may not exceed six hours per day or 30 hours per week for funding purposes. The total contact hours generated per week shall be divided by 30 to determine the full-time equivalents. Special education full-time equivalents generated shall be deducted from the school district's ADA for purposes of the regular education allotment.

(d) The receipt of special education funds shall be contingent upon the operation of an approved comprehensive special education program in accordance with state and federal laws and regulations. No district may divert special education funds for other purposes, with the exception of administrative costs as defined in Chapter 105, Subchapter B, of this title (relating to Maximum Indirect Cost Allowable on Certain Foundation School Program Allotments). Funds generated by full-time equivalents in one instructional arrangement may be spent on the overall special education program and are not limited [~~tied~~] to the instructional arrangement [~~in~~] which [~~they were~~] generated the funds. The district must maintain separate accountability for the total state special education program fund within the general fund.

(e) A special education fund balance may be carried over to the next fiscal year but [~~and~~] must be expended on the special education program in the subsequent year. State special education carryover funds cannot be used for administrative costs.

(f) Students who are at least three, but younger than 22, years of age on September 1 of the current scholastic year who participate in the regional day school program for the deaf may be counted as part of the district's ADA if they receive instruction from the basic program for at least 50% of the school day.

(g) Students from birth through age two with a visual or auditory impairment or both who are provided services by the district according to an individual family services plan (IFSP) shall be enrolled on the district home or regional day school campus and shall be considered eligible for ADA on the same basis as other students receiving special education services.

(h) Funding for the mainstream special education instructional arrangement shall be based on the average daily attendance of the students in the arrangement multiplied by the adjusted basic allotment/adjusted allotment (ABA/AA) and the 1.1 weight. The attendance shall not be converted to contact hours/full-time equivalents as with the other instructional arrangements.

§89.1125. Allowable Expenditures of State Special Education Funds.

(a) Persons paid from special education funds shall be assigned to instructional or other duties in the special education program and/or to provide support services to the regular education program in order for students with disabilities to be included in the regular program. Support services shall include, but not be limited to, collaborative planning, co-teaching, small group instruction with special and regular education students, direct instruction to special education students, or other support services determined necessary by the admission, review, and dismissal (ARD) committee for an appropriate program for the student with disabilities. Assignments may include duties supportive to school operations equivalent to those assigned to regular education personnel.

(b) Personnel assigned to provide support services to the regular education program as stated in subsection (a) of this section may be fully funded from special education funds.

(c) If personnel are assigned to special education on less than a full-time basis, except as stated in subsection (a) of this section, only that portion of time for which the personnel are assigned to students with disabilities shall be paid from state special education funds.

(d) State special education funds may be used for special materials, supplies, and equipment which are directly related to the development and implementation of individualized education programs [~~individual educational plans~~] (IEPs) of students and which are not ordinarily purchased for the regular classroom. Office and routine classroom supplies are not allowable. Special equipment may include instructional and assistive technology devices, audiovisual equipment, computers for instruction or assessment purposes, and assessment equipment only if used directly with students.

(e) State special education funds may be used to contract with consultants to provide staff development, program planning and evaluation, instructional services, assessments, and related services to students with disabilities.

(f) State special education funds may be used for transportation only to and from residential placements. Prior to using federal funds for transportation costs to and from a residential facility, a district must use state or local funds based on actual expenses up to the state transportation maximum for private transportation contracts.

(g) State special education funds may be used to pay [~~special education~~] staff travel to perform services directly related to the education of eligible students with disabilities. Funds may also be used to pay travel of staff (including administrators, general education teachers, and special education teachers and service providers) to attend staff development meetings for the purpose of improving performance in assigned positions directly related to the education of eligible students with disabilities. In no event shall the [~~The~~] purpose for attending such staff development meetings [~~shall not~~] include time spent in performing functions relating to the operation of professional organizations. In accordance with 34 Code of Federal Regulations, §300.382(j), funds may also be used to pay for the joint training of parents and special education, related services, and general education personnel.

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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DIVISION 5. SPECIAL EDUCATION AND RELATED SERVICE PERSONNEL

19 TAC §89.1131

The amendment is proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The amendment implements 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, and 29.005.

§89.1131. Qualifications of Special Education, Related Service, and Paraprofessional Personnel.

(a) All special education and related service personnel shall be certified, endorsed, or licensed in the area or areas of assignment in accordance with 34 Code of Federal Regulations (CFR), §300.23 and §300.136 [~~§300.15 and §300.153~~]; the Texas Education Code (TEC), §§21.002, 21.003, and 29.304; or appropriate state agency credentials.

(b) A teacher who holds a special education certificate or an endorsement may be assigned to any level of a basic special education instructional program serving eligible students 3-21 years of age, as defined in §89.1035(a) of this title (relating to Age Ranges for Student Eligibility), in accordance with the limitation of their certification, except for the following.

(1) Persons assigned to provide speech therapy instructional services must hold a valid Texas Education Agency (TEA) certificate in speech and hearing therapy or speech and language therapy, or a valid state license as a speech/language [~~speech language~~] pathologist.

(2) Teachers holding only a special education endorsement for early childhood education for children with disabilities shall be assigned only to programs serving infants through Grade 6.

(3) Teachers assigned full-time to teaching students who are orthopedically impaired or other health impaired with the teaching station in the home or a hospital shall not be required to hold a special education certificate or endorsement as long as the personnel file contains an official transcript indicating that the teacher has completed a three-semester-hour survey course in the education of students with disabilities and three semester hours directly related to teaching students with physical impairments or other health impairments.

(4) Teachers certified in the education of students with visual impairments must be available to students with visual impairments, including deaf-blindness, [~~who are visually impaired~~] through one of the school district's instructional options, a shared services [~~service~~] arrangement [~~unit~~] with other school districts, or an education service center (ESC). A teacher who is certified in the education of students with visual impairments must attend each admission, review, and dismissal (ARD) committee meeting or individualized family service plan (IFSP) meeting of a student with a visual impairment, including deaf-blindness. [~~These teachers must attend admission, review, and dismissal (ARD) committee and individualized family services plan (IFSP) meetings when a student, birth through 21 years of age, with a visual impairment is being considered.~~]

(5) Teachers certified in the education of students with auditory impairments must be available to students with auditory impairments, including deaf-blindness, [~~who are auditorially impaired~~] through one of the school district's instructional options, a regional day school program for the deaf, a shared services [~~service~~] arrangement [~~unit~~] with other school districts, or an ESC. A teacher who is certified in the education of students with auditory impairments must attend each ARD committee meeting or IFSP meeting of a student with an auditory impairment, including deaf-blindness. [~~These teachers must attend ARD committee and IFSP meetings when a student, birth through 21 years of age, with an auditory impairment is being considered.~~]

(6) The following provisions apply to physical education.

(A) When the ARD committee has made the determination [~~recommendation~~] and the arrangements are specified in the student's individualized education program [~~individual educational plan~~] (IEP), physical education may be provided by the following personnel:

(i) special education instructional or related service personnel who have the necessary skills and knowledge;

(ii) physical education teachers;

(iii) occupational therapists;

(iv) physical therapists; or

(v) occupational therapy assistants or physical therapy assistants working under supervision in accordance with the standards of their profession.

(B) When these services are provided by special education personnel, the district must document that they have the necessary skills and knowledge. Documentation may include, but need not be limited to, inservice records, evidence of attendance at seminars or workshops, or transcripts of college courses.

(7) Teachers assigned full-time or part-time to instruction of students from birth through age two with visual impairments , including deaf-blindness, shall be certified in the education of students with visual impairments. Teachers assigned full-time or part-time to instruction of students from birth through age two who are deaf , including deaf-blindness, shall be certified in education for students who are deaf and severely hard of hearing. Other certifications for serving these students shall require prior approval from TEA.

(8) Teachers with secondary certification with the generic delivery system may be assigned to teach Grades 6-12 only.

(c) Paraprofessional personnel may be assigned to work with eligible students, special education teachers, and related service personnel. Aides may also be assigned to assist students with special education transportation, [~~or~~] serve as a job coach , or serve in support of community-based instruction. Aides paid from state administrative funds may be assigned to the Special Education Resource System (SERS), the Special Education Management System (SEMS), or other special education clerical or administrative duties.

(d) Interpreting services for students who are deaf shall be provided by an interpreter who is certified in the appropriate language mode(s), if certification in such mode(s) is available. If certification is available, the interpreter must be certified by the Registry of Interpreters for the Deaf or the Texas Commission for the Deaf and Hard of Hearing, unless the interpreter has been granted an emergency permit by the commissioner of education to provide interpreting services for students who are deaf. The commissioner shall consider applications for the issuance of an emergency permit to provide interpreting services for students who are deaf on a case-by-case basis in accordance with requirements set forth in 34 CFR, §300.136, and standards and procedures established by the TEA. In no event will an emergency permit allow an uncertified interpreter to provide interpreting services for more than a total of three school years to students who are deaf.

[(d) This subsection will expire August 31, 1997. An aide may be assigned to function as a teacher assistant under the following conditions.]

[(1) Qualifications shall include all of the following:]

[(A) high school graduate or equivalent;]

[(B) 30 semester hours of college credit with some emphasis on child growth and development or related areas, or a minimum of three years experience working directly with children or youth (as appropriate) in instructional or child care facilities; and]

[(C) documented ongoing inservice or other staff development activities related to the education of students with disabilities.]

[(2) Assignment of an aide as a teacher assistant shall be for the following purposes:]

[(A) providing individualized instruction in an environment other than the designated supervising teacher's classroom;]

[(B) reinforcing academic or developmental skills requiring extensive repetition or drill and practice on skills which have been previously taught by the supervising teacher; and]

[(C) assisting students in job training/employment and community-based instructional programs.]

[(3) Supervision shall be by a certified special education teacher who is directly responsible for the implementation of the students' IEPs and evaluation of their progress. For teacher assistants operating under paragraph (2)(A) and (B) of this subsection, supervision shall be for a minimum of one hour per day during student instruction, in addition to the time necessary for joint planning and preparation. For teacher assistants operating under paragraph (2)(C) of this subsection, supervision shall be for a minimum of one hour per day or five hours per week.]

[(4) Assignment shall be in one of the following:]

[(A) homebound;]

[(B) hospital class;]

[(C) self-contained classes listed in §89.63 of this title (relating to Instructional Arrangements and Settings);]

[(D) off home campus; or]

[(E) vocational adjustment class.]

(e) Orientation and mobility instruction shall be provided by a professional who holds at least a bachelor's degree with a major in the field of orientation and mobility instruction and who is certified by the Association for Education and Rehabilitation of the Blind and Visually Impaired.

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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DIVISION 6. HEARINGS CONCERNING STUDENTS WITH DISABILITIES UNDER THE INDIVIDUALS WITH DISABILITIES EDUCATION ACT

19 TAC §§89.1151, 89.1155, 89.1160, 89.1165, 89.1170, 89.1175, 89.1180, 89.1185, 89.1190

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

The repeals are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The repeals implement 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, and 29.005.

§89.1151. Purpose.
§89.1155. Definitions.
§89.1160. Applicability.
§89.1165. Request for Hearing.
§89.1170. Impartial Hearing Officer.
§89.1175. Hearing Rights.
§89.1180. Prehearing Procedures.
§89.1185. Hearing.
§89.1190. Student's Status During Proceedings.

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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DIVISION 7. RESOLUTION OF DISPUTES BETWEEN PARENTS AND SCHOOL DISTRICTS

19 TAC §§89.1150, 89.1151, 89.1165, 89.1170, 89.1180, 89.1185, 89.1191

The new sections are proposed under 34 Code of Federal Regulations, §300.600, which outlines the responsibilities of TEA for all educational programs; and Texas Education Code, §§29.001, 29.003, and 29.005, which authorizes the commissioner of education to adopt rules related to delivering special education services.

The new sections implement 34 CFR, §300.600; and Texas Education Code, §§29.001, 29.003, and 29.005.

§89.1150. General Provisions.

(a) From time to time, disputes may arise between a parent and a school district relating to the identification, evaluation, or educational placement of or the provision of a free appropriate public education (FAPE), to a student with a disability.

(b) It is the policy and intent of the Texas Education Agency (TEA) to encourage and support the resolution of any dispute described in subsection (a) of this section at the lowest level possible and in a prompt, efficient, and effective manner.

(c) The possible options for resolving disputes include, but are not limited to:

(1) meetings of the student's admission, review, and dismissal committee;

(2) meetings or conferences with the student's teachers;

(3) meetings or conferences, subject to local school district policies, with campus administrator(s), the special education director of the district (or the shared services arrangement to which the district may be a party), the superintendent of the district, or the board of trustees of the district;

(4) requesting mediation through the TEA in accordance with the Individuals with Disabilities Education Act (IDEA), 20 United States Code (USC), §1415(e), and 34 Code of Federal Regulations (CFR), §300.506;

(5) filing a complaint with the TEA in accordance with 34 CFR, §§300.600-300.662; or

(6) requesting a due process hearing through the TEA in accordance with IDEA, 20 USC, §1415(f), and 34 CFR, §§300.507-300.514. Upon the filing of a request for a due process hearing, the parent and the school district shall also be provided with an opportunity to resolve the dispute through the mediation process established by TEA.

§89.1151. Due Process Hearings.

(a) A parent or public education agency may initiate a due process hearing as provided in the Individuals with Disabilities Education Act (IDEA), Part B, as amended, 20 United States Code (USC), §§1401 et seq., and the applicable federal regulations, 34 Code of Federal Regulations (CFR), §§300.1 et seq.

(b) The Texas Education (TEA) shall implement a one-tier system of due process hearings under the IDEA. The proceedings in due process hearings shall be governed by the provisions of 34 CFR, §§300.507-300.514, and 34 CFR, §300.528, if applicable, and §§89.1151, 89.1165, 89.1170, 89.1180, 89.1185 and 89.1191 of this subchapter.

(c) The issues presented in a due process hearing, and any relief requested, are limited to and may be based only upon facts alleged to have occurred not more than one year prior to the date that the request for due process hearing is received by TEA or since the date of the last admission, review, and dismissal committee meeting of the student who is the subject of the hearing, whichever period is longer, but in no event more than two years prior to the date that the request for due process hearing is received by TEA.

§89.1165. Request for Hearing.

(a) A request for a due process hearing must be in writing and must be filed with the Texas Education Agency, 1701 N. Congress Avenue, Austin, Texas 78701. The request for a due process hearing may be filed by mail, hand-delivery, or facsimile and shall be deemed filed only when actually received by the office responsible for legal services at the Texas Education Agency (TEA). The TEA has developed a model form which may be used by a parent to initiate a due process hearing. The form is available on request from TEA, all regional education service centers, and all school districts. The form is also available on TEA's website.

(b) If the request for a due process hearing does not specify the issues to be heard and the relief requested, the hearing officer shall require the complaining party to supplement the request, orally or in writing, to clarify the issues to be heard at the hearing and the relief sought by the complaining party.

§89.1170. Impartial Hearing Officer.

(a) Each due process hearing shall be conducted by an impartial hearing officer selected by the Texas Education Agency (TEA).

(b) The hearing officer has the authority to administer oaths; call and examine witnesses; rule on motions, including discovery and dispositive motions; determine admissibility of evidence and amendments to pleadings; maintain decorum; schedule and recess the proceedings from day to day; and make any other orders as justice requires, including the application of sanctions as necessary to maintain an orderly hearing process.

(c) If the hearing officer is removed, dies, becomes disabled, or withdraws from an appeal before the completion of duties, the TEA may designate a substitute hearing officer to complete the performance of duties without the necessity of repeating any previous proceedings.

§89.1180. Prehearing Procedures.

(a) Promptly upon being assigned to a hearing, the hearing officer will schedule a prehearing conference to be held at a time reasonably convenient to the parties to the hearing. The prehearing conference shall be held by telephone unless the hearing officer determines that circumstances require an in-person conference.

(b) The hearing officer shall ensure that a written, or, at the option of either party, an electronic, verbatim record of the prehearing conference is made.

(c) The purpose of the prehearing conference shall be to consider any of the following:

(1) specifying and simplifying issues;

(2) admitting certain assertions of fact or stipulations;

(3) establishing any limitation of the number of witnesses and the time allotted for presenting each party's case; and/or

(4) discussing other matters which may aid in simplifying the proceeding or disposing of matters in controversy, including settling matters in dispute.

(d) Promptly upon the conclusion of the prehearing conference, the hearing officer will issue and deliver to the parties, or their legal representatives, a written prehearing order which identifies:

(1) the time, place, and date of the hearing;

(2) the issues to be resolved at the hearing;

(3) the relief being sought at the hearing;

(4) the deadline for disclosure of evidence and identification of witnesses, which must be at least five business days prior to the scheduled date of the hearing (hereinafter referred to as the "Disclosure Deadline");

(5) the date by which the final decision of the hearing officer shall be issued; and

(6) other information determined to be relevant by the hearing officer.

(e) No pleadings, other than the request for hearing, are mandatory, unless ordered by the hearing officer. Any pleadings after the request for a due process hearing shall be filed with the hearing officer. Copies of all pleadings shall be sent to all parties of record in the hearing and to the hearing officer. If a party is represented by an attorney, all copies shall be sent to the attorney of record. Telephone facsimile copies may be substituted for copies sent by other means. An affirmative statement that a copy of the pleading has been sent to all parties and the hearing officer is sufficient to indicate compliance with this rule.

(f) Discovery methods shall be limited to those specified in the Administrative Procedure Act (APA), Texas Government Code, Chapter 2001, and may be further limited by order of the hearing officer. Upon a party's request to the hearing officer, the hearing officer may issue subpoenas and commissions to take depositions under the APA. Subpoenas and commissions to take depositions shall be issued in the name of the Texas Education Agency.

(g) On or before the Disclosure Deadline (which must be at least five business days prior to a scheduled due process hearing), each party must disclose and provide to all other parties and the hearing officer copies of all evidence (including, without limitation, all evaluations completed by that date and recommendations based on those evaluations) which the party intends to use at the hearing. An index of the documents disclosed must be included with and accompany the documents. Each party must also include with the documents disclosed a list of all witnesses (including their names, addresses, phone numbers, and professions) which the party anticipates calling to testify at the hearing.

(h) A party may request a dismissal or nonsuit of a due process hearing to the same extent that a plaintiff may dismiss or nonsuit a case under Texas Rules of Civil Procedure, Rule 162. However, if a party requests a dismissal or nonsuit of a due process hearing after the Disclosure Deadline has passed and, at any time within one year thereafter requests a subsequent due process hearing involving the same or substantially similar issues as those alleged in the hearing which was dismissed or nonsuited, then, absent good cause or unless the parties agree otherwise, the Disclosure Deadline for the subsequent due process hearing shall be the same date as was established for the hearing that was dismissed or nonsuited.

§89.1185. Hearing.

(a) The hearing officer shall afford the parties an opportunity for hearing after reasonable notice of not less than ten days, unless the parties agree otherwise.

(b) Each hearing shall be conducted at a time and place that are reasonably convenient to the parents and child involved.

(c) All persons in attendance shall comport themselves with the same dignity, courtesy, and respect required by the district courts of the State of Texas. All argument shall be made to the hearing officer alone.

(d) Except as modified or limited by the provisions of 34 Code of Federal Regulations (CFR), §§300.507-300.514, 300.521, or 300.528, or the provisions of §§89.1151-89.1191 of this subchapter, the Texas Rules of Civil Procedure shall govern the proceedings at the hearing and the Texas Rules of Evidence shall govern evidentiary issues.

(e) Before a document may be offered or admitted into evidence, the document must be identified as an exhibit of the party offering the document. All pages within the exhibit must be numbered, and all personally identifiable information must be redacted from the exhibit.

(f) The hearing officer may set reasonable time limits for presenting evidence at the hearing.

(g) Upon request, the hearing officer, at his or her discretion, may permit testimony to be received by telephone.

(h) Granting of a motion to exclude witnesses from the hearing room shall be at the hearing officer's discretion.

(i) Hearings conducted under this subchapter shall be closed to the public, unless the parent requests that the hearing be open.

(j) The hearing shall be recorded and transcribed by a reporter, who shall immediately prepare and transmit a transcript of the evidence to the hearing officer with copies to each of the parties. The hearing officer shall instruct the reporter to delete all personally identifiable information from the transcription of the hearing.

(k) Filing of post-hearing briefs shall be permitted only upon order of the hearing officer and only upon a finding by the hearing officer that the legal issues involved in the hearing are novel or unsettled in the State of Texas or the Fifth Circuit. Any post-hearing briefs permitted by the hearing officer shall be limited to the legal issues specified by the hearing officer.

(l) The hearing officer shall issue a final decision, signed and dated, no later than 45 days after a request for hearing is received by the Texas Education Agency, unless the deadline for a final decision has been extended by the hearing officer as provided in subsection (m) of this section. A final decision must be in writing and must include findings of fact and conclusions of law separately stated. Findings of fact must be based exclusively on the evidence presented at the hearing. The final decision shall be mailed to each party by the hearing officer. The hearing officer, at his or her discretion, may render his or her decision following the conclusion of the hearing, to be followed by written findings of fact and written decision.

(m) At the request of either party, the hearing officer shall include, in the final decision, specific findings of fact regarding the following issues:

(1) whether the parent or the school district unreasonably protracted the final resolution of the issues in controversy in the hearing; and

(2) if the parent was represented by an attorney, whether the parent's attorney provided the school district the appropriate information in the due process complaint in accordance with 34 CFR, §300.507(c).

(n) In making a finding regarding the issue described in subsection (m)(1) of this section, the hearing officer shall consider the extent to which each party had notice of, or the opportunity to resolve, the issues presented at the due process hearing prior to the date on which the due process hearing was requested. If, after the date on which a request for a due process hearing is filed, either the parent or the school district requests that a meeting of the admission, review, and dismissal (ARD) committee of the student who is the subject of the due process hearing be convened to discuss the issues raised in the request for a due process hearing, the hearing officer shall also consider the extent to which each party participated in the ARD committee meeting in a good faith attempt to resolve the issue(s) in dispute prior to proceeding to a due process hearing.

(o) A hearing officer may grant extensions of time for good cause beyond the 45-day period specified in subsection (l) of this section at the request of either party. Any such extension shall be granted to a specific date and shall be stated in writing by the hearing officer to each of the parties.

(p) The decision issued by the hearing officer is final, except that any party aggrieved by the findings and decision made by the hearing officer, or the performance thereof by any other party, may bring a civil action with respect to the issues presented at the due process hearing in any state court of competent jurisdiction or in a district court of the United States, as provided in 20 United States Code (USC), §1415(i)(2), and 34 CFR, §300.512. A civil action brought in state or federal court under 20 USC, §1415(i)(2), and 34 CFR, §300.512, must be initiated no more than 45 days after the date the hearing officer issued his or her written decision in the due process hearing.

(q) In accordance with 34 CFR, §300.514(c), a school district shall implement any decision of the hearing officer that is, at least in part, adverse to the school district in a timely manner within ten school days after the date the decision was rendered.

§89.1191. Special Rule for Expedited Due Process Hearings.

An expedited due process hearing requested by a party under 34 Code of Federal Regulations (CFR), §300.528, shall be governed by the same rules as are applicable to due process hearings generally, except that the final decision of the hearing officer must be issued and mailed to each of the parties no later than 45 days after the date the request for the expedited hearing is received by the Texas Education Agency, without exceptions or extensions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 25. HEALTH SERVICES

PART 2. TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

CHAPTER 405. CLIENT (PATIENT) CARE
SUBCHAPTER D. DETERMINATION OF MENTAL RETARDATION AND APPROPRIATENESS FOR ADMISSION TO MENTAL RETARDATION SERVICES

25 TAC §§405.81 - 405.92

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

The Texas Department of Mental Health and Mental Retardation (department) proposes the repeal of §§405.81 - 405.92 of Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services.

The repeal is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, Section 1.11, 76th Legislature).

The subject matter of the repealed subchapter is addressed in new §§415.151 - 415.163 of Chapter 415, Subchapter D, concerning diagnostic eligibility for services and supports--mental retardation priority population and related conditions, which is proposed contemporaneously in this issue of the *Texas Register* for public review and comment.

William R. Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the proposed repeal is in effect, enforcing or administering the repeal does not have foreseeable implications relating to costs or revenues of the state or local governments.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five years the repeal is in effect, the public benefit is expected to be a comprehensive, system-wide approach to determining whether an individual is diagnostically eligible to receive services and supports as part of the department's mental retardation priority population or as a result of having a related condition. It is not anticipated that the repeal will have an adverse economic effect on small businesses or micro businesses because the repeal does not result in additional requirements on them. It is not anticipated that the proposed repeal will affect a local economy.

Comments concerning this proposal must be submitted in writing to Linda Logan, director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The repeal of the subchapter is proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, §591.004 provides the board with authority to adopt rules implementing the Persons with Mental Retardation Act (PMRA), §592.002, which requires the board to adopt rules ensuring the implementation of rights guaranteed in the PMRA, including the right to a DMR (§592.018) and the right to an administration hearing to contest the findings of a DMR (§592.019).

Texas Health and Safety Code, §§532.015, 591.004, 592.002, 592.108, 592.019, and Chapter 593, Subchapter A are affected by the proposed repeal.

§405.81. Purpose.
§405.82. Application.
§405.83. Definitions.
§405.84. Certification of Associate Psychologists by the Department.
§405.85. Determination of Mental Retardation.
§405.86. Admission to Community-Based Services.
§405.87. Admission or Commitment to a Residential Care Facility.
§405.88. General Provisions.
§405.89. Charges for Determination of Mental Retardation and Admissions Eligibility.
§405.90. Report Formats.
§405.91. Distribution.
§405.92. References.

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 August 7, 2000.

TRD-200005486
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Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
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For further information, please call: (512) 206-4516

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CHAPTER 415. PROVIDER CLINICAL RESPONSIBILITIES

SUBCHAPTER D. DIAGNOSTIC ELIGIBILITY FOR SERVICES AND SUPPORTS--MENTAL RETARDATION PRIORITY POPULATION AND RELATED CONDITIONS

25 TAC §§415.151 - 415.163

The Texas Department of Mental Health and Mental Retardation (department) proposes new §§415.151 - 415.163 of Chapter 415, Subchapter D, concerning diagnostic eligibility for services and supports--mental retardation priority population and related conditions. The new subchapter will replace existing Chapter 405, Subchapter D, concerning determination of mental retardation and appropriateness for admission to mental retardation services, the repeal of which is proposed contemporaneously for public review and comment in this issue of the *Texas Register*.

The new subchapter is part of a comprehensive reorganization of chapters and subchapters within the department's portion of the Texas Administrative Code in conjunction with the sunset review of agency rules required by Texas Government Code, §2001.039 (as added by Senate Bill 178, §1.11, 76th Legislature).

The new subchapter describes the: criteria and process to be followed by psychologists licensed to practice in Texas, TDMHMR-certified psychologists, and physicians licensed to practice in Texas when conducting a determination of mental retardation (DMR); process to be followed by a mental retardation authority (MRA) when reviewing a DMR conducted by another entity; process to be followed by an MRA when assessing whether an individual meets the criteria for a diagnosis of pervasive development disorder (PDD) or a related condition; process to be followed by an MRA when assessing an individual's service and support needs; criteria and process to be followed by an MRA when assessing an individual's appropriateness for services in a state mental retardation facility (state MR facility); and criteria and process to be followed by the department when designating an employee of an MRA, state facility, or the department's Central Office as a TDMHMR-certified psychologist.

William R. Campbell, deputy commissioner, Finance and Administration, has determined that for each year of the first five years the proposed new subchapter is in effect, enforcing or administering the new subchapter does not have foreseeable implications relating to costs or revenues of the state or local governments.

Barry Waller, director, Long Term Services and Supports, has determined that for each year of the first five years the new subchapter is in effect, the public benefit is expected to be a comprehensive, system-wide approach to determining whether an individual is diagnostically eligible to receive services and supports as part of the department's mental retardation priority population or as a result of having a related condition. It is not anticipated that the new section will have an adverse economic effect on small businesses or micro businesses because the new subchapter does not place requirements on them. It is not anticipated that the proposed new subchapter will affect a local economy.

Comments concerning this proposal must be submitted in writing to Linda Logan, Director, Policy Development, Texas Department of Mental Health and Mental Retardation, by mail to P.O. Box 12668, Austin, Texas 78711, or by fax to (512) 206-4750, within 30 days of publication of this notice.

The new sections are proposed under the Texas Health and Safety Code, §532.015(a), which provides the Texas Mental Health and Mental Retardation Board with broad rulemaking authority, §591.004 provides the board with authority to adopt rules implementing the Persons with Mental Retardation Act (PMRA), §592.002, which requires the board to adopt rules ensuring the implementation of rights guaranteed in the PMRA, including the right to a DMR (§592.018) and the right to an administration hearing to contest the findings of a DMR (§592.019).

Texas Health and Safety Code, §§532.015, 591.004, 592.002, 592.108, 592.019, and Chapter 593, Subchapter A are affected by the proposed new subchapter.

§415.151. Purpose.

The purpose of this subchapter is to describe the:

(1) criteria and process to be followed by psychologists licensed to practice in Texas, TDMHMR-certified psychologists, and physicians licensed to practice in Texas when conducting a determination of mental retardation (DMR);

(2) process to be followed by a mental retardation authority (MRA) when reviewing a DMR conducted by another entity;

(3) process to be followed by an MRA when assessing whether an individual meets the criteria for a diagnosis of pervasive development disorder (PDD) or a related condition;

(4) process to be followed by an MRA when assessing an individual's service and support needs;

(5) criteria and process to be followed by an MRA when assessing an individual's appropriateness for services in a state mental retardation facility (state MR facility); and

(6) criteria and process to be followed by the department when designating an employee of an MRA, state facility, or the department's Central Office as a TDMHMR-certified psychologist.

§415.152. Application.

This subchapter applies to:

(1) mental retardation authorities (MRAs);

(2) psychologists and physicians licensed to practice in Texas who conduct DMRs;

(3) TDMHMR-certified psychologists;

(4) state facilities; and

(5) employees of MRAs, state facilities, and the department's Central Office who seek certification by the department as TDMHMR-certified psychologists as described in §415.161 of this title (relating to TDMHMR-certified Psychologist).

§415.153. Definitions.

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

(1) Adaptive behavior--The effectiveness with or degree to which an individual meets the standards of personal independence and social responsibility expected of the individual's age and cultural group as assessed by a standardized measure.

(2) Community center--A community mental health and mental retardation center established under the THSC, Chapter 534.

(3) Commissioner--The commissioner of the department.

(4) Department--The Texas Department of Mental Health and Mental Retardation.

(5) Developmental period--Birth to 18 years of age.

(6) Diagnostic assessment--An assessment, including a DMR, conducted to determine if an individual has mental retardation, a pervasive developmental disorder, or a related condition.

(7) DMR (determination of mental retardation)--An assessment conducted as described in §415.155 of this title (relating to Determination of Mental Retardation (DMR)) by a TDMHMR-certified psychologist, a psychologist licensed to practice in Texas, or a physician licensed to practice in Texas to determine if an individual has mental retardation.

(8) DSM--The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*.

(9) Individual--A person who is the focus of a diagnostic eligibility assessment or who has been determined to be in the mental retardation priority population.

(10) IDT (interdisciplinary team)--A group of people assembled by an MRA that assesses the treatment, training, and habilitation needs of an individual and makes recommendations for services and supports. The group typically includes:

(A) the individual;

(B) the individual's LAR, if any;

(C) other concerned persons, with the approval of the individual or LAR; and

(D) mental retardation professionals and paraprofessionals designated by the MRA.

(11) LAR (legally authorized representative)--A person authorized by law to act on behalf of an individual with regard to a matter described in this subchapter, and may include a parent, guardian, or managing conservator of a minor individual, a guardian of an adult individual, or a personal representative of a deceased individual.

(12) Mental retardation--Consistent with THSC, §591.003, significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(13) Mental retardation priority population--Those individuals who meet one or more of the following criteria:

(A) have mental retardation;

(B) have a pervasive developmental disorder (PDD);

(C) have a related condition and be eligible for services in a Medicaid program operated by the department;

(D) be a nursing facility resident who is eligible for specialized services for mental retardation or a related condition pursuant to §1919(e)(7) of the Social Security Act;

(E) be a child who is eligible for early childhood intervention (ECI) services provided in accordance with Chapter 621 of this title (relating to Early Childhood Intervention Services).

(14) MRA (mental retardation authority)--Consistent with THSC, §533.035, an entity designated by the commissioner to which the Texas Mental Health and Mental Retardation Board delegates its authority and responsibility for planning, policy development, coordination, and resource allocation, and resource development for and oversight of services and supports in one or more local service areas.

(15) Permanency planning--A philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement with the primary feature of an enduring and nurturing parental relationship.

(16) Pervasive developmental disorder (PDD)--As described in the most current edition of the DSM, a severe and pervasive impairment in the developmental areas of reciprocal social interaction skills or communication skills, or the presence of stereotyped behaviors, interests, and activities manifested during the developmental period, usually before 10 years of age.

(17) Related condition--As defined in the Code of Federal Regulations (CFR), Title 42, §435.1009, a severe and chronic disability that:

(A) is attributable to:

(i) cerebral palsy or epilepsy; or

(ii) any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for those persons with mental retardation;

(B) is manifested before the person reaches age 22; and

(C) is likely to continue indefinitely; and

(D) results in substantial functional limitation in three or more of the following areas of major life activity:

(i) self-care;

(ii) understanding and use of language;

(iii) learning;

(iv) mobility;

(v) self-direction; and

(vi) capacity for independent living.

(18) Services and supports--Programs and assistance funded through the department that are provided or contracted for by an MRA or state MR facility for the mental retardation priority population. As described in THSC, §593.003, the programs or assistance may include a DMR, interdisciplinary team recommendations, education, special training, supervision, care, treatment, rehabilitation, residential care, and counseling, but does not include those services or programs that have been explicitly delegated by law to other state agencies.

(19) State facility--A state school, state hospital, or state center operated by the department.

(20) State MR facility (state mental retardation facility)--A state school or state center operated by the department that provides residential services to persons with mental retardation.

(21) Significantly subaverage general intellectual functioning--Consistent with THSC, §591.003, measured intelligence on standardized general intelligence tests of two or more standard deviations (not including standard error of measurement adjustments) below the age-group mean for the tests used.

(22) TDMHMR-certified psychologist--An employee of an MRA, state facility, or the department's Central office who is certified by the department as described in §415.161 of this title (relating to TDMHMR-certified Psychologist).

(23) THSC--Texas Health and Safety Code.

§415.154. General Provisions.

(a) Except as described in subsection (c) of this section, an individual must have been determined to be in the mental retardation priority population before receiving services and supports.

(b) An MRA or state facility must make appropriate accommodations when conducting a diagnostic assessment for an individual:

(1) who does not speak English;

(2) for whom English is a second language; or

(3) for whom communication devices and/or techniques (including sign language) are necessary.

(c) An individual may receive the following services and supports without being in the mental retardation priority population:

(1) emergency services provided in accordance with Texas Health and Safety Code (THSC), §593.027 or §593.0275;

(2) respite care in a residential care facility provided in accordance with THSC, §593.028;

(3) in-home and family support services as described in Chapter 401, Subchapter L of this title (relating to In-Home and Family Support Program); and

(4) services in a state MR facility ordered in accordance with Texas Family Code, §55.33 or §55.52.

§415.155. Determination of Mental Retardation (DMR).

(a) An individual or the individual's LAR may make a written request for a DMR to:

(1) the MRA serving the area in which the individual resides;

(2) a psychologist licensed to practice in Texas; or

(3) a physician licensed to practice in Texas.

(b) An individual receiving services from a state facility may have a DMR conducted by a psychologist employed by or contracting with that state facility or a TDMHMR-certified psychologist employed by that state facility.

(c) A DMR must be conducted as described in this subsection.

(d) At an MRA or state facility, the DMR must be conducted by a:

(1) psychologist licensed to practice in Texas who is employed by or contracting with the MRA or state facility; or

(2) TDMHMR-certified psychologist who is employed by the MRA or state facility.

(e) The psychologist, TDMHMR-certified psychologist, or physician who conducts a DMR must:

(1) interview the individual; and

(2) perform a professional assessment that, at a minimum, includes:

(A) a standardized measure of the individual's intellectual functioning using the most appropriate test for the characteristics of the individual;

(B) a standardized measure of the individual's adaptive behavior level;

(C) a review of evidence supporting the origination of mental retardation during the individual's developmental period, which should include, as available:

(i) reports concerning the cause of the suspected mental retardation;

(ii) results of several or all previous assessments that are representative of the individual's typical functioning;

(iii) types of services the individual has received or is receiving that are indicative of mental retardation;

(iv) reports by other people, including the individual's family members and friends; and

(v) educational history and classifications; and

(D) a review of the individual's psychological and psychiatric treatments and diagnoses.

(f) The interview and assessment described in subsection (e) of this section must be conducted using diagnostic techniques adapted to the individual's age, cultural background, ethnic origins, language, and physical or sensory disabilities.

(g) A previous assessment, social history, or relevant record from another entity, including a school district, public or private agency, or another psychologist, TDMHMR-certified psychologist, or physician may be used as part of a DMR if the person who conducts the DMR considers the assessment, social history, or relevant record to be a valid reflection of the individual's current level of functioning.

(h) Within 30 days of completing the interview and assessment described in subsection (e) of this section, the person who conducted the DMR must provide the person who requested the DMR with a written report that is dated, signed, and includes the licensure/certification number of the person who conducted the DMR. The written report must contain:

(1) background information summarizing the individual's:

(A) developmental history, including a description of the evidence of origination of mental retardation during the individual's developmental period; and

(B) psychological and psychiatric treatments and diagnoses;

(2) results of current intellectual and adaptive behavior assessments with:

(A) instrument names and scores;

(B) overall intellectual and adaptive behavior levels; and

(C) individual scale scores, if available;

(3) a narrative description of:

(A) test results, including relative strengths and weaknesses;

(B) testing conditions; and

(C) any relevant negative impact on the test results because of the individual's:

(i) cultural background;

(ii) primary language;

(iii) communication style;

(iv) physical or sensory impairments;

(v) motivation;

(vi) attentiveness; and

(vii) emotional factors; and

(4) conclusions, diagnoses (to include *DSM* codes), and recommendations, including a statement of:

(A) whether the individual meets the criteria for mental retardation; and

(B) if the individual does not meet the criteria for mental retardation, whether individual meets the criteria for PDD or a related condition.

(i) If a DMR is conducted at an MRA or state facility, the MRA or state facility must:

(1) inform the person who applied for the DMR of the right to an:

(A) additional, independent DMR to be conducted at the person's expense if the person questions the validity or results of the DMR; and

(B) administrative hearing to contest the findings as described in Chapter 403, Subchapter N of this title (relating to Administrative Hearings Arising under the Persons with Mental Retardation Act); and

(2) document that the person who applied for the DMR was informed orally and in writing of these rights.

(j) If a DMR has been ordered by a court for guardianship proceedings, the person who conducts the DMR:

(1) should submit the written findings and recommendations as specified in the court's order; and

(2) may submit a current capacity assessment of the individual conducted as described in §411.61 of this title (relating to Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management).

(k) An MRA must charge for a DMR in accordance with the provisions of Chapter 403, Subchapter B of this title (related to Charges for Community-based Services).

§415.156. Review and Endorsement of a DMR.

(a) If an individual has been determined to have mental retardation by a person who is not employed by or contracting with an MRA at which the individual or the individual's LAR seeks services and supports, the DMR must be reviewed by a:

(1) psychologist employed by or contracting with that MRA; or

(2) TDMHMR-certified psychologist employed by that MRA.

(b) A psychologist who contracts with the MRA to review DMRs or is employed by the MRA must not review a DMR conducted by that psychologist outside the psychologist's role as a contractor or employee of the MRA.

(c) If a DMR reviewed as described in subsection (a) of this section is endorsed by the psychologist or TDMHMR-certified psychologist, the MRA shall:

(1) prepare a report documenting the outcome of the review;

(2) inform the individual or the individual's LAR orally and in writing of the outcome of the review;

(3) assess the individual's appropriateness for services and supports as described in §415.159 this title (relating to Assessment of Individual's Need for Services and Supports); and

(4) if services in a state MR facility are requested by the individual or the individual's LAR, convene an interdisciplinary team (IDT) as described in §415.160 of this title (relating to IDT Assessment of Whether Individual Can Be Served Most Appropriately in a State Mental Retardation Facility).

(d) If a DMR reviewed as described in subsection (a) of this section is not endorsed by the psychologist or TDMHMR-certified psychologist, the MRA shall:

(1) prepare a report documenting the outcome of the review; and

(2) inform the individual or the individual's LAR orally and in writing of the:

(A) outcome of the review; and

(B) opportunity to have the MRA conduct a DMR at no expense to the individual or the individual's LAR.

(e) The written report documenting the outcome of the review must be provided to the individual or the individual's LAR within 30 calendar days after the review is completed.

§415.157. Pervasive Developmental Disorder (PDD).

(a) If an individual requesting services and supports or for whom services and supports are requested is determined not to have mental retardation, information from the DMR may be used to diagnose the individual as having a pervasive development disorder (PDD) by a psychologist employed by or contracting with an MRA or a TDMHMR-certified psychologist using criteria from the current edition of the DSM.

(b) At a minimum, a diagnosis of PDD must be based on:

(1) the individual exhibiting severe and pervasive impairment in the developmental areas of:

(A) reciprocal social interaction skills;

(B) communication skills; or

(C) stereotyped behaviors, interests, and activities;

(2) qualitative impairments that define these conditions which are distinctly different relative to the individual's developmental age or mental age; and

(3) evidence of onset before 10 years of age which will include, as available:

(A) results of previous assessments that are representative of the individual's typical functioning;

(B) types of services the individual has received or is receiving which are indicative of a PDD; and

(C) reports by other people, including the individual's family members and friends, that indicate a developmental history of a PDD.

(c) If an individual has been diagnosed as having PDD by person who is not employed by or contracting with the MRA at which the individual or the individual's LAR seeks services and supports, the diagnosis must be reviewed by a:

(1) psychologist employed by or contracting with that MRA; or

(2) TDMHMR-certified psychologist employed by that MRA.

(d) A psychologist who contracts with the MRA to review diagnoses of PDD or is employed by the MRA will not be permitted to review a diagnosis made by that psychologist outside of the psychologist's role as a contractor or employee of the MRA.

(e) If a diagnosis reviewed as described in subsection (c) of this section is endorsed by the psychologist or TDMHMR-certified psychologist, the MRA shall:

(1) document the outcome of the review in the individual's record;

(2) inform the individual or the individual's LAR orally and in writing of the outcome of the review;

(3) assess the individual's appropriateness for services and supports as described in §415.159 this title (relating to Assessment of Individual's Service and Support Needs).

(f) If a diagnosis reviewed as described in subsection (c) of this section is not endorsed by the psychologist or TDMHMR-certified psychologist, the MRA shall:

(1) document the outcome of the review in the individual's record; and

(2) inform the individual or the individual's LAR orally and in writing of the outcome of the review

(g) An individual who is diagnosed as having PDD may be eligible for services and supports funded by general revenue appropriations from the Texas Legislature.

§415.158. Related Condition (RC).

If an individual requesting services and supports or for whom services and supports are requested is found not to have mental retardation, information from the DMR may be used to establish eligibility for services and supports based on the existence of a related condition, as described in Chapter 406, Subchapter E of this title (relating to Eligibility and Review).

§415.159. Assessment of Individual's Need for Services and Supports.

(a) A representative of the MRA serving the area in which an individual resides must ascertain the types of services and supports being requested and the individual's interests, choices, and needs by interviewing the:

(1) individual and the individual's LAR; or

(2) persons actively involved with the individual, if the individual does not have an LAR and the MRA representative believes the individual does not have the ability to understand the process and its ramifications.

(b) The MRA representative along with the individual or the individual's LAR or persons actively involved with the individual, at a minimum, function as a planning team to develop an initial plan for services and supports. The plan may include referrals by the MRA to other appropriate service agencies.

(c) If the individual or LAR is seeking residential mental retardation services, the MRA representative must provide both an oral and written explanation to the individual or LAR of the services and supports for which the individual may be eligible.

(1) As required by THSC, §533.038, the explanation must address:

(A) Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Program services--both state mental retardation facilities and community-based facilities;

(B) waiver services under §1915(c) of the Social Security Act; and

(C) other community-based services and supports that may meet the individual's needs.

(2) A copy of the written explanation must be given to the individual or LAR and the original retained in the record of the individual. The written explanation must:

(A) describe the program and service preferences of the individual or LAR; and

(B) be signed and dated by the individual or LAR to indicate that the explanation was provided.

(3) If the services and supports requested by the individual or LAR are not available, the MRA must:

(A) assist the individual or LAR in gaining access to alternative services and supports and appropriate waiting lists;

(B) document efforts undertaken by the MRA to obtain the requested services and supports, including the names and addresses of programs and facilities to which the individual or LAR was referred; and

(C) document the services and supports for which the individual is waiting.

§415.160. IDT Assessment of Whether Individual Can Be Served Most Appropriately in a State Mental Retardation Facility.

(a) As required by THSC, §593.013, an individual will not be admitted for voluntary services or committed to a state MR facility unless an IDT convened by the MRA serving the area in which the individual resides:

(1) assesses the individual's appropriateness for services in the state MR facility; and

(2) recommends the admission or commitment.

(b) The IDT shall:

(1) interview the individual or the individual's LAR;

(2) review the individual's:

(A) social and medical history;

(B) medical assessment, which shall include an audiological, neurological, and vision screening;

(C) psychological and social assessment; and

(D) assessment of adaptive behavior level;

(3) assess the individual's need for additional assessments, including educational and vocational assessments;

(4) obtain any additional assessments necessary to plan services;

(5) recommend services to address the individual's needs that consider the individual's interests, choices, and goals, and, for the individual who is a child, include permanency planning as a goal; and

(6) prepare a written report of its findings and recommendations that is signed by each team member and sent within 30 calendar days to the individual or LAR, as appropriate.

(c) If the individual is being considered for court commitment to a state MR facility, the IDT report must have been completed within six months prior to the date of the court hearing. An IDT report ordered by a court shall be submitted promptly to the:

(1) court as directed in the court's order; and

(2) individual or the individual's LAR.

(d) An individual may be admitted to a state MR facility on an emergency basis without a DMR and an IDT recommendation under the provisions of the THSC, §593.027(c). However, within 30 days of an admission for emergency services:

(1) a DMR must be performed as described in §415.155 of this title (relating to Determination of Mental Retardation (DMR)); and

(2) an IDT must assess the individual and make a recommendation as described in this section.

§415.161. TDMHMR-certified Psychologist.

(a) An employee of an MRA, state facility, or the department's Central Office who is not a licensed psychologist may apply to become a TDMHMR-certified psychologist by submitting:

(1) a written request for certification to the department's commissioner or designee, Texas Department of Mental Health and Mental Retardation, P.O. Box 12668, Austin, Texas 78711-2668; and

(2) documentation of:

(A) current employment by an MRA, state facility, or in Central Office;

(B) provisional licensure as a psychologist or licensure as a psychological associate or specialist in school psychology;

(C) successful completion of graduate course work in individual intellectual assessment;

(D) supervised experience in adaptive behavior assessment; and

(E) one year of employment in the field of mental retardation.

(b) The department's commissioner or designee will review the documentation submitted as described in subsection (a) of this section. If the documentation is determined to be acceptable, the department's commissioner or designee will issue a certificate designating the person as a TDMHMR-certified psychologist.

(c) A person certified as an associate psychologist and employed by an MRA, state facility, or Central Office as of the effective date of this subchapter will be designated as a TDMHMR-certified psychologist without the submission of the documentation required in subsection (a)(2) of this section, if a written request to do so is submitted by the person's supervisor. The department will issue a new certificate designating that person as a TDMHMR-certified psychologist.

(d) A TDMHMR-certified psychologist is permitted to conduct DMRs only while functioning as an employee of an MRA, state facility, or the department's Central Office.

(e) A person's designation as a TDMHMR-certified psychologist will become ineffective if the person fails to maintain active licensure status as described in subsection (a)(2)(B) of this section, unless the person's designation was granted as described in subsection (c) of this section.

§415.162. References.

Reference is made in this subchapter to the following statutes, federal regulations, rules of the department and of other state agencies, and other relevant documents:

(1) Social Security Act, §1915(b);

(2) Code of Federal Regulations, Title 42, §435.1009;

(3) THSC, Chapter 534, §§533.038, 591.003, 592.018, 593.003, 593.013, 593.027, 593.0275, 593.028;

(4) Texas Family Code, §55.33 or §55.52;

(5) Chapter 401, Subchapter L of this title (relating to In-Home and Family Support Program);

(6) Chapter 403, Subchapter B of this title (related to Charges for Community-based Services);

(7) Chapter 403, Subchapter N of this title (relating to Administrative Hearings Arising Under the Persons with Mental Retardation Act);

(8) Chapter 406, Subchapter E of this title (relating to Eligibility and Review);

(9) §411.61 of this title (relating to Memorandum of Understanding Concerning Capacity Assessment for Self Care and Financial Management);

(10) Chapter 621 of this title (relating to Early Childhood Intervention Services); and

(11) The American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders.*

§415.163. Distribution.

(a) This subchapter is distributed to:

(1) members of the Texas Mental Health and Mental Retardation Board;

(2) executive, management, and program staff in the department's Central Office;

(3) superintendents/directors of state facilities;

(4) executive directors of state-operated community services;

(5) chairs of boards of trustees of community centers;

(7) executive directors of mental retardation authorities;

(8) interested advocates and advocacy organizations

(9) all county and juvenile court judges; and

(10) commissioners of the following state agencies:

(A) Texas Department of Health;

(B) Texas Department of Human Resources;

(C) Texas Department of Protective and Regulatory Services;

(D) Texas Health and Human Services Commission;

(E) Texas Education Agency;

(F) Texas Rehabilitation Commission; and

(G) Texas Youth Commission.

(b) The superintendent/director of each state facility and the executive director of each MRA is responsible for distributing copies of this subchapter to appropriate staff.

(c) A copy of this subchapter will be provided to any person who requests it.

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 August 7, 2000.

TRD-200005487
Charles Cooper
Chair, Texas MHMR Board
Texas Department of Mental Health and Mental Retardation
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 206-4516

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 85. ADMISSION AND PLACEMENT
SUBCHAPTER B. PLACEMENT PLANNING

37 TAC §85.23

The Texas Youth Commission (TYC) proposes an amendment to §85.23, concerning classification. The amendment to the section will ensure that sentenced offenders are not released from confinement except under rules controlling such release. The amendment will also add the penal code offense 22.11 Harassment by Persons in Certain Correctional Facilities, also known as *chunking*, and 22.105 Coercing, Soliciting or Inducting Gang Membership, as a type B violent offense. The classification, type B violent offender is a TYC administratively assigned classification based on a youth's committing or classifying offense. A twelve month minimum length of stay in a high restriction facility is attached when a youth is classified as a type B violent offender.

Terry Graham, Assistant Deputy Executive Director for Financial Support, has determined that for the first five-year period the section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Mr. Graham also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be greater protection for TYC staff and the general public. 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. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy and Manuals Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.75, which provides the Texas Youth Commission with the authority to determine the treatment of youth.

The proposed rule implements the Human Resource Code, §61.034, which provides the Texas Youth Commission with the authority to adopt rules to accomplish its function.

§85.23. Classification

(a) Purpose. The purpose of this rule is to establish a system for classifying each youth admitted to the Texas Youth Commission (TYC), which can be consistently applied and ensures consistent management of each youth.

(b) Explanation of Terms Used.

(1) Classification - the designation assigned each youth based on the youth's offense history, the classifying offense, and a finding regarding extenuating circumstances incident to the classifying offense. A youth who commits an offense while in TYC custody may be administratively reclassified through a Level I hearing.

(2) Classifying offense - the offense on which classification is based. It is the most serious of the relevant offenses documented in the youth's record. Relevant offenses are:

(A) on commitment, the committing offense and any offense(s) for which the youth was on probation at the time of the committing offense; or

(B) following a level I hearing, the offense(s) found at the hearing except when the hearing is for a youth classified as a sentenced offender, in which case, the youth's classification continues to be *sentenced offender.*

(3) Committing offense - the most serious of the offenses found at the youth's most recent judicial proceeding.

(4) Most serious offense - the offense having the most severe consequences attached. The most serious offense is determined according to the following hierarchy, with each subsequent factor being considered only if two or more relevant offenses yield the same result under the preceding factor. If two or more offenses yield the same results through all steps of the hierarchy, determination of the most serious offense is left to the discretion of the staff assigning classification. The most serious offense is:

(A) an offense which carries determinate sentence;

(B) the offense for which the designated minimum length of stay will produce the longest time in the physical custody of TYC;

(C) the offense which requires the highest level of restriction in placement;

(D) the offense which carries the most severe criminal penalty; and

(E) the most recently adjudicated offense.

(5) Federal offenses - youth who have committed federal offenses and are sent to TYC by Federal courts. If a committing and/or classifying offense is a violation of a federal statute, the offense will be treated as a violation of a state statute which prohibits the same conduct as the relevant federal statute. Federal violations will be identified by the code number assigned to the corresponding substantive state statute preceded by an "F".

(c) Classification assignment is based on the policy in effect at the time a youth is classified or is reclassified as appropriate. Classification of youth currently classified shall not change when the criteria for classification changes.

(d) Classifications.

(1) Sentenced Offender. A sentenced offender is a youth committed to TYC pursuant to §54.04(d)(3) or §54.05(f) Family Code for offenses committed:

(A) prior to January 1, 1996, for:

(i) murder, 19.02, all

(ii) capital murder, 19.03, all

(iii) aggravated kidnapping, 20.04, all

(iv) aggravated sexual assault, 22.021, all

(v) deadly assault on a law enforcement officer, corrections officer, or court participant, 22.03, all

(vi) criminal attempt, 15.01, only if the offense attempted was Capital Murder (Sec.19.03)

(B) on or after January 1, 1996, for an offense listed in subsection (d)(1)(A) of this section or:

(i) sexual assault, 22.011, all

(ii) aggravated assault, 22.02, all

(iii) aggravated robbery, 29.03, all

(iv) injury to a child, elderly individual, or disabled individual, 22.04, first, second or third degree felony only

(v) deadly conduct, 22.05, felony only

(vi) aggravated or first degree controlled substances felony, subchapter D, Chapter 481 Health and Safety Code, aggravated or first degree felony only

(vii) criminal solicitation, 15.03, all

(viii) indecency with a child, 21.11, second degree felony only

(ix) criminal solicitation of a minor, 15.031, all

(x) criminal attempt, 15.01, only if offense attempted was a murder (sec. 19.02), indecency with a child (sec. 21.11(a)(1)), aggravated kidnapping (sec. 20.04), sexual assault 22.011(a)(2) upon a child only, aggravated sexual assault (sec. 22.021), aggravated robbery (sec. 29.03), or repeat conviction under Health and Safety Code 481.134(c), (d), (e), or (f).

(xi) habitual felony conduct, as defined in Juvenile Justice Code, 51.031

(C) on or after September 1, 1997, for an offense listed in subsection (d)(1)(A) or (d)(1)(B) of this section or arson, 28.02, first degree felony only.

(2) Type A - Violent Offender. A type A violent offender is a youth whose classifying offense is the commission, attempted commission , conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition (Title 5) for each offense in its entirety except where TYC policy limits the applicability to the specific subsections or under the conditions named.

(A) murder, 19.02, all

(B) capital murder, 19.03, all

(C) sexual assault, 22.011, all

(D) aggravated sexual assault, 22.021, all

(3) Type B - Violent Offender. A type B violent offender is a youth whose classifying offense is the commission, attempted commission, conspiracy to commit, solicitation, solicitation of a minor to commit, or engaging in organized criminal activity to commit one of the offenses listed in this paragraph and who has not been sentenced to commitment in TYC. TYC adopts the Texas Penal Code definition for each offense listed in (A-Z) of this subsection in its entirety except where TYC policy limits the applicability to specific subsections or under the conditions named.

(A) manslaughter, 19.04, all

(B) criminally negligent homicide, 19.05, all

(C) unlawful restraint, 20.02, felony only

(D) kidnapping, 20.03, all

(E) aggravated kidnapping, 20.04, all

(F) assault, 22.01, felony only

(G) indecency with a child, 21.11, all

(H) sexual assault, 22.011, all (only for youth classified before July 1, 1996)

(I) aggravated assault, 22.02, all

(J) aggravated sexual assault, 22.021, all (only for youth classified before July 1, 1996)

(K) injury to child, elderly or disabled individual, 22.04, all

(L) abandoning or endangering a child, 22.041, all

(M) deadly conduct, 22.05, felony only

(N) terroristic threat, 22.07, felony only

(O) aiding suicide, 22.08, felony only

(P) tampering with a consumer product, 22.09, all

(Q) harassment by persons in secure correctional facilities, 22.11, all

(R) coercing, soliciting or inducing gang membership, 22.015, felony only

(S) [~~(Q)~~] arson, 28.02, all

(T) [~~(R)~~] robbery, 29.02, all

(U) [~~(S)~~] aggravated robbery, 29.03, all

(V) [~~(T)~~] burglary, 30.02, only with intent to commit any other type A or type B violent offense

(W) [~~(U)~~] intoxication assault, 49.07, all

(X) [~~(V)~~] intoxication manslaughter, 49.08, all

(Y) [~~(W)~~] intentionally participating with at least two other persons in conduct at a contract program or TYC operated facility that threatens imminent harm to persons or property and substantially obstructs the performance of facility operations or a program therein.

(Z) [~~(X)~~] intentionally, knowingly, or recklessly causing bodily injury to a:

(i) TYC employee;

(ii) contract program employee;

(iii) volunteer; or

(iv) person who is providing contract services at a contract program or TYC operated facility.

(4) Chronic Serious Offender. A chronic serious offender is a youth whose classifying offense is a felony and who has been found to have committed at least one felony in each of at least three separate and distinct due process hearings, where the second felony was committed after the disposition of the first felony and the third felony was committed after the disposition of the second felony.

(5) Controlled Substances Dealer. A controlled substances dealer is a youth whose classifying offense is any felony grade offense defined as a manufacture or delivery offense under the Texas Controlled Substances Act, Chapter 481, Health and Safety Code.

(6) Firearms Offender. A firearms offender is a youth whose classifying offense involved a finding by the court or TYC hearings examiner that the youth possessed a firearm during the offense. Classifying offenses for this classification are not limited to offenses specified in Chapter 46 of the Texas Penal Code.

(7) Violator of CINS Probation. A violator of CINS probation is a youth who:

(A) is committed for violating terms of probation by an act which would not be punishable by imprisonment or confinement in jail if committed by an adult; and

(B) was on probation at the time of the probation revocation for no act more serious than Conduct Indicating a Need for Supervision (CINS) as defined in the Texas Family Code, Title 3.

(8) General Offender. A general offender is a youth who is not eligible for any other classification.

(e) Extenuating Circumstances.

(1) A designated classification, except sentenced offender, may be waived and a less restrictive classification assigned by a TYC hearings examiner at a TYC Level I due process hearing when the hearings examiner finds extenuating circumstances.

(2) Extenuating circumstances incident to a violent offense are those facts which indicate that the youth is not a significant danger to the physical or emotional well-being of another. Examples of such facts include, but are not limited to:

(A) the youth was an indirect or passive participant in a violent act;

(B) the youth set fire to an abandoned vehicle;

(C) the youth engaged in consensual sexual intercourse with someone who was capable of appraising the nature of that act and of resisting it.

(3) Extenuating circumstances incident to offenses other than violent offenses are those facts which explain a youth's conduct but do not constitute a legally recognized defense to the conduct. Examples of such facts include, but are not limited to acts in which:

(A) the only property involved in the offense was of minimal value and was returned undamaged to its owner;

(B) the only bodily injury intended or inflicted by the youth consisted of brief or minor discomfort;

(C) the youth's conduct was an impulsive response to perceived provocation and posed no threat to persons or property;

(D) the youth was persuaded to participate in the offense by a parent or other authority figure.

(4) When extenuating circumstances incident to the classifying offense are found, the designated classification may be waived.

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

Filed with the Office of the Secretary of State, on July 31, 2000.

TRD-200005325
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 424-6301

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PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

37 TAC §343.8, §343.9

The Texas Juvenile Probation Commission proposes amendments to §343.8 and §343.9 concerning multiple occupancy sleeping units. The amendment is being proposed in an effort to alleviate some of the problems associated with overcrowding in detention facilities while maintaining certain space and supervision requirements.

Scott Friedman, Director of Field Services, has determined that for the first five year period the amendments are in effect, there will be no fiscal implications for state or local government or small businesses as a result of enforcement or implementation.

Mr. Friedman has also determined that for each year of the first five years the amendments are in effect, the public benefit expected as a result of enforcement or implementation will be primarily cost savings in construction of detention facilities and an increase in approved population capacity. There will be no impact on small business or individuals as a result of the amendments.

Public comments on the proposed amendments may be submitted to Kristy M. Carr at the Texas Juvenile Probation Commission, P.O. Box 13547, Austin, Texas, 78711-3547.

The amendments are proposed under Texas Human Resources Code §141.042, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules that provide minimum standards for juvenile boards and that are necessary to provide adequate and effective probation services.

No other rule or standard is affected by these amendments.

§343.8. Physical Plant.

(a) Written policy and procedure and practice of the following standards shall apply to all detention facilities.

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

(6) Population. The population in housing and living units shall not exceed the rated capacity of the facility. Written policies shall specify procedures to be followed in case the rated capacity is unavoidably exceeded. Such procedures shall specify steps to be taken to reduce the population to the rated capacity. [~~A facility that is chronically overcrowded shall meet TJPC policies regarding such conditions in order to be considered for a temporary waiver of this standard.~~]

(7)-(9) (No change.)

(b) The following standards shall apply to all detention facilities except for hold over detention facilities.

(1) Sleeping units. [~~Sleeping rooms shall be utilized as single occupancy, except for all juvenile detention facilities designed for multiple occupancy, and operating as such, prior to September 1, 1996. Sleeping rooms shall have a minimum ceiling height of seven and one-half feet and a minimum of 60 square feet of floor space. Juveniles held in sleeping rooms shall have access to a toilet above floor level, a wash basin, drinking water, running water, and a bed above floor level. There shall be separate sleeping rooms for male and female juveniles.~~]

(A) Single Occupancy Sleeping Units. Sleeping rooms shall be utilized as single occupancy, except for all juvenile detention units designed for multiple occupancy and approved by TJPC. Sleeping rooms shall have a minimum ceiling height of seven and one-half feet and a minimum of 60 square feet of floor space. Juveniles held in sleeping rooms shall have access to a toilet above floor level, a wash basin, drinking water, running water, and a bed above floor level. There shall be separate sleeping rooms for male and female juveniles.

(B) Multiple Occupancy Sleeping Units. A unit designed and constructed for multiple occupancy sleeping which is self-contained and includes appropriate sleeping, sanitation and hygiene equipment or fixtures within the unit. The utilization of multiple occupancy sleeping units shall have prior written approval and authorization from the juvenile board. The following standards shall not apply to any multiple occupancy units designed and operating as such prior to the effective date of this section

(i) The capacity of multiple occupancy sleeping units shall not exceed 25% of the design capacity of the facility. No more than eight juveniles shall be housed in each multiple occupancy sleeping unit. Separate units shall be provided for male and female residents.

(ii) Multiple occupancy sleeping units shall have a minimum ceiling height of seven and one half feet with a minimum of thirty-five unencumbered square feet of floor space per resident.

(iii) Multiple occupancy sleeping units shall have one bed above floor level for every juvenile assigned to the unit. Bunk beds are not allowed in the unit.

(iv) Multiple occupancy sleeping units shall have within the unit, so that juveniles have access without having to be escorted out of the unit, to toilets (ratio of 1 toilet per 4 juveniles); wash basins (ratio of 1 wash basin per 8 juveniles); and drinking water.

(v) Juveniles are not to be admitted to multiple occupancy sleeping units directly from the intake process. Classification, screening, and behavioral observation must occur for at least 72 hours before the decision is made to admit the juvenile to a multiple occupancy sleeping unit in accordance to 343.9(c).

(vi) Juveniles in multiple occupancy sleeping units shall be under constant personal visual supervision by a detention officer. The ratio of staff to juveniles in the multiple occupancy sleeping units shall be 1 to 8 at all times. There shall be no architectural barriers between the supervising detention officer and the juveniles assigned to the unit.

(2)-(7) (No change.)

(8) Common activity area. Total common activity area [~~space for day rooms, classrooms, dining rooms, and recreation rooms~~] shall encompass no less than 100 square feet of floor space per juvenile. Common activity areas are defined as areas to which juveniles have access and in which activities are conducted. These areas include but are not limited to dayrooms, dining rooms, covered recreation areas, recreation rooms, education rooms, counseling rooms, testing rooms, visitation areas, and medical or dental rooms.

(9)-(12) (No change.)

§343.9. Security and Control.

(a) Written policy and procedure and practice of the following standards shall apply to all detention facilities.

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

(3) Special Incidents. Written policy, procedure, and practice shall ensure that all [~~All~~] special incidents including, but not limited to, the taking of hostages, escapes, assaults, staff use of restraint devices~~, chemical agents,~~] and physical force shall be reported in writing to the Administrative Officer. A copy of the report shall be [~~is~~] placed in the permanent file of the juvenile concerned. Written procedure shall designate persons or officials at the local level, as deemed appropriate by the juvenile board, to whom notice of special incidents shall be provided.

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

(b) (No change.)

(c) Written policy, procedure and practice of the following standards shall apply to all detention facilities that utilize multiple occupancy sleeping units.

(1) Classification Plan. Facilities with multiple occupancy sleeping units shall have a classification plan that determines how juveniles are grouped in said units. Juveniles shall be classified for grouping by age and gender, at a minimum.

(2) Screening Plan. Juveniles shall be psychologically, medically, and behaviorally screened by appropriate professionals prior to placement in a multiple occupancy sleeping unit. Juveniles with the following indicators shall not be allowed admittance to multiple occupancy sleeping units:

(A) Medical illness which may be contagious to other residents or to staff unless they wear protective clothing and/or masks, or medical conditions which require treatment and/or equipment that would present a risk to resident or others;

(B) Mental illness, if the resident exhibits behavior dangerous to other residents or to staff;

(C) Mental retardation, if the resident exhibits behavior dangerous to other residents or to staff;

(D) Sex offenders who cannot function appropriately in a group setting;

(E) Exploitive, victimizing behavior;

(F) Violent, explosive, assaultive behavior;

(G) Chronic detention rule violators;

(H) Juvenile likely to be exploited or victimized by others;

(I) Juveniles who have other special needs for single housing; or

(J) Any other behavior or condition which could impose a threat to self or others safety and health.

(3) Administrative Approval. The placement of any juvenile into a multiple occupancy sleeping unit shall be approved by the facility administrator or other designated probation department administrators.

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 August 2, 2000.

TRD-200005398
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 424-6710

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PART 12. TEXAS MILITARY FACILITIES COMMISSION

CHAPTER 375. BUILDING CONSTRUCTION ADMINISTRATION

37 TAC §§375.1 - 375.11

The Texas Military Facilities Commission proposes amendments to §§375.1-375.11, concerning building construction administration.

The sections are being amended in order to be in compliance with House Bill 1, Article IX, §167, regarding review of an agency's rules. The adopted review to Chapter 375 is being published elsewhere in this issue of the *Texas Register*. As part of that review process, these sections are being amended.

Lydia Cruz, Director of Accounting and Administration, Texas Military Facilities Commission, has determined that for each year of the first five years that the proposed rules are in effect there will be no effect on state or local government.

Ms. Cruz has also determined that for each year of the first five years that the proposed rules are in effect, the benefit to the public will be the agency's compliance with House Bill 1, Article IX, §167. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

The Commission requests comments on the proposed rules from any interested person. Comments may be submitted, in writing, no later than 30 days after the date of publication of this notice to Tina Burford, Texas Military Facilities Commission, P. O. Box 5426, Austin, Texas 78763-5426.

The amendments are proposed under the Texas Government Code, Chapter 435, which authorizes the Commission to adopt rules deemed necessary in accordance with House Bill 1, Article IX, §167.

There is no other code, article, or statute affected by these amendments.

§375.1. General Project Responsibility.

(a) The commission [~~board~~] staff (staff) is responsible for the administration of project analyses, major construction projects, [~~and~~] renovation projects, associated construction, and major contracted repairs for all Texas National Guard Armories,facilities, and improvements owned by the state located on commission property [~~and associated construction and major contracted repairs at these facilities~~].

(b) During the life of any project for which it has responsibility, the [~~board~~] staff will maintain close liaison with the adjutant general's department regarding the needs of the Texas National Guard.

(c) Upon completion of a construction project, the [~~board~~] staff will establish the warranty date in compliance with contract documents and release the project to the adjutant general's department [~~and release the project to the adjutant general's department~~] for occupancy and use. The adjutant general's department then assumes responsibility for use of the facility.

(d) During the term [~~tenure~~] of all warranties on a construction project, the staff [~~board~~] is responsible for assuring that the contractor meets the terms of such warranties.

(e) Each construction project administered by the commission [~~board~~] shall bear the cost of services rendered thereon including, but not limited to, professional services, staff time, prior project analysis costs, travel expense, the estimated cost of minor and incidental materials used in pursuit of project, and an account necessary to cover employee benefits. At the start of a construction project, an estimate of the cost of normal and routine services will be developed by the staff [~~facility engineer~~].

(f) Each project analysis prepared by the staff [~~board~~] will include an estimate of all administrative costs to be applied against a construction project based upon the analysis.

(g) All private architectural/engineering (A/E) fees paid on a project analysis are deducted from A/E fees on a subsequent construction project, provided:

(1) the A/E on the construction project is the same firm which prepared the project analysis; and

(2) the construction project is in accordance with that proposed in the project analysis. Should the project vary substantially from the project analysis, the amount of prior project analysis fee will be prorated in accordance with the amount of change requested by the using agency, as mutually agreed upon by the Adjutant General's Department, [~~using agency,~~] the A/E, and the commission [~~board~~].

§375.2. Project Analysis Responsibilities.

(a) Responsibility for initiation of a project analysis lies with the commission [~~board~~], the [~~board~~] staff, and the [~~or~~] adjutant general's department.

(b) Project analyses shall be initiated not later than January 1 of even numbered years in order to assure completion in time for submission of proper data to budget agencies for study prior to the regular session of the legislature.

(c) Project analyses may be prepared by the [~~board~~] staff or by a private A/E.

(d) Project analyses shall include:

(1) justification for the project in a brief and specific form;

(2) an estimate of the annual cost of maintenance including utilities;

(3) an estimate of the annual cost of operating the facility excluding staffing;

(4) feasibility of construction of the project in stages if prudent; and

(5) a program outlining the purpose and scope of the project including space requirements.

(e) Upon completion and before submission to budget agencies, the staff [board] and adjutant general's department must certify that the analysis fulfills the adjutant general's department needs for the project.

(f) Upon certification of its adequacy, the [board] staff will distribute copies of the analysis to the appropriate [budget] agencies.

(g) Use of the project analysis in preparing a budget request to the legislature is the responsibility of the [board] staff.

§375.3. Construction Project Responsibilities.

(a) Responsibility for initiation of a construction project is with thecommission, [board, board] staff, and the [or] adjutant general's department.

(b) Projects must be initiated in ample time for a contract award to be made within the fiscal year for which appropriated project funds are available. Based upon the size and complexity of a [given] project, the [board] staff has the prerogative of determining whether sufficient time is available to prepare proper bidding documents, secure bids, and award a contract.

(c) Initial action by the adjutant general's department on a construction project shall be submission of a request to initiate the project.

(d) An adjutant general's department request must identify the amount, if any, of the federal funds to be applied to the project.

(e) Selection of a firm to provide professional services on a project will be in accordance with adopted rules.

(f) If a construction project is supported by a prior prepared project analysis, the analysis shall be the project program unless the adjutant general's department advises that an unavoidable change in project conditions has forced a modification in the analyzed concept.

(g) If a construction project is not supported by a project analysis, the adjutant general's department should cooperate with the [board] staff to provide necessary data on which to prepare a project program. The [board] staff will be responsible for distribution of information to the A/E.

(h) During project development, the adjutant general's department shall review and approve each phase before the next phase is started, including schematic design, design development, and finished working drawings and specifications.

(i) The Adjutant general's department approval of working drawings and specifications constitutes staff [board] authority to proceed with solicitation of bids.

(j) [When bids are received, the board] The staff will formally award a contract if acceptable bid(s) are within the approved project budget. If bid(s) exceed the approved budget, the [board] staff will again review the bids and if the bids appear reasonable, and funds are available, the staff may [shall consult the board for authority to award a contract and] revise the [project] budget and award a contract.

(k) Should the budget not provide a basis for a contract award, the [board] staff will request consultation to determine whether the scope of the project can be reduced enough to bring it within the budget.

(l) Staff [During tenure of the contract, the board staff] will make all payments on the project.

(m) Any [During tenure of the contract, any] changes in the scope of the work shall be approved by the [board] staff before being made a part of the contract.

(n) Upon completion of construction, a representative of the adjutant general's department shall be invited to attend [an owner's] final inspection, called and conducted by the [board] staff.

§375.4. Qualification of Architect/Engineer (A/E) for Professional Services.

(a) For the purpose of this chapter, an architect/engineer means a person licensed to practice architecture/engineering in Texas. [registered as an architect pursuant to Chapter 478, Acts of 45th Legislature, regular session, 1937, as amended (codified as Texas Civil Statutes, Article 249a) and/or a person registered as a professional engineer pursuant to Chapter 404, Acts of the 45th Legislature, regular session, 1937, as amended (codified as Texas Civil Statutes, Article 3271a),] The architect/engineer is employed to provide professional architectural and/or engineering services and having overall responsibility for the design of a project. The term architect/engineer standing by itself may, unless the context clearly indicates otherwise, mean either an architect/engineer employed by the commission [board] on a salary basis or an architect/engineer in private practice retained under a contractual agreement with the commission [board]. The term private architect/engineer shall specifically refer to a registered architect or registered professional engineer in private practice retained by the commission [board] under a contractual agreement.

[(b) Any A/E is eligible for consideration to provide professional services on the board projects.]

(b) [(c)] The A/E shall submit informative responses [answers] to a request for qualifications [questionnaire] regarding the size of [his] staff, field of interest, experience, and capability and may[, if he chooses,] supplement the answers with brochures and other material.

(c) [(d)] The [board] staff will maintain all data received from A/E on [in a suitable] file for reference.

§375.5. Selection of Architect/Engineer for Professional Services.

When funds are made available to the commission [board] for a construction project, the following procedures shall be followed.

(1) The director will form a selection committee using commission [the agency facility engineer and other agency] employees who are knowledgeable concerning the nature, scope, project location and who have an understanding of state or federal facility design, engineering, and/or contracting procedures. The [From time to time the] director may, with the concurrence of the Adjutant General of Texas, utilize available employees of the adjutant general's department or active members of the Texas National Guard to serve as members of such selection committees.

(2) The selection committee will determine from the project description a list of the minimum qualifications that a prospective A/E should possess in order to provide professional services on the project.

(3) The selection committee, where possible, will compile a list of at least three firms that meet or exceed the minimum qualifications for further consideration.

(4) The list will be drawn from a file of A/E firms which have expressed an interest in work supervised by the commission [~~board~~] by having responded to a request for qualification [~~questionnaire~~] or by submitting adequate data on experience and capability in other formats.

(5) Firms selected for consideration will be notified and given a brief description of the project, and those interested in further consideration will be scheduled for interviews with the selection committee.

(6) Each firm interviewed will be rated individually by each committee member on a numeric scale [~~of 1 to 10~~]. The firm receiving the highest total rating from the [~~combined~~] members of the committee will be considered the preferred firm for the project.

(7) In case of identical scores, additional qualifications of the firms will be considered and rated individually until ties are resolved.

(8) The staff will attempt to negotiate an agreement with the architect/engineer scored the highest by the selection committee. Negotiations by the staff will be under the direction of the executive director. Should the staff be unable to reach an agreement with the architect/engineer scored the highest by the selection committee, the staff will terminate negotiations with that architect/engineer and attempt to negotiate an agreement with the architect/engineer scored the next highest by the selection committee. Should the commission be unable to reach an agreement with this firm, a similar procedure will be followed until an agreement is reached. [~~The firm rated highest by the committee will then be offered the project and an agreement negotiated for the work to be performed. Should the selected firm and the board staff fail to arrive at a mutually acceptable agreement, the project will be offered to the firm rated second highest. In the unlikely event that an agreement cannot be reached with the second choice, a similar procedure will be followed with the third highest rated firm.~~]

(9) After selection is completed, unsuccessful firms will be advised of the decision [~~determination~~].

(10) Items of consideration in making the initial selection will include, but will not be limited to, the following:

(A) The A/E's experience with projects similar in nature to the one for which the firm is being considered;

(B) the location of the A/E's home office relative to the project site;

(C) compatibility between the size of the firm and the size of the project;

(D) the quality and amount of previous work done for the commission [~~board~~] (Satisfactory experience is obviously conducive to favorable consideration, but in the interest of giving as many eligible and qualified firms as possible a fair chance to obtain commission [~~board~~] work, a substantial amount of prior commission [~~board~~] work may be the basis for rejection);

(E) current work load and capability of proceeding with project at reasonable speed; and

(F) experience with control of budgets and schedules; [~~cooperation with owners.~~]

(G) the A/E status as a Historically Underutilized Business (HUB).

§375.6. Contracts with Architects/Engineers.

(a) The contract form for A/E services is a standard document adopted by the staff [~~board~~] or National Guard Bureau and approved by the attorney general of Texas for use.

(b) The contract will name the project, state the budgeted project cost, describe the respective responsibilities of the A/E and the commission [~~board~~], and establish the compensation the A/E will receive for his services.

(c) Compensation for A/E services is not bound by a fixed schedule except as may be otherwise established by law.

(d) The contract may be amended to reflect desirable changes in project scope, responsibility, or compensation at any time upon written consent of both contracting parties.

§375.7. Qualifications of Contractor To Bid Construction Projects.

(a) Any contractor interested in participating in bidding on any commission [~~board~~] construction/renovation project should advise the commission [~~board~~] thereof by writing.

(b) An interested contractor will be sent a contractor's qualifications form to complete and return to the commission [~~board~~]. The completed form will provide information concerning the contractor's type of organization, names of partners or officers, type of work performed, experience history, financial condition, bonding capacity, and financial and construction related references. Contractor may update file information [~~File information may be updated by contractor~~] as significant changes in [~~his~~] status occur.

(c) Staff will determine if contractors meet the minimum qualifications for the project before making bidding documents available[~~Out of state contractors may bid state work but must, if awarded a contract, notify the state comptroller of public accounts, Texas Employment Commission, state industrial accident board, and local county tax assessor/collector and must execute a nonresident contractor's surety bond for 10% of the contract, unless the contractor is eligible for a reciprocity exemption under Texas Civil Statutes, Article 5160a~~].

§375.8. Bidding Procedures.

(a) All commission [~~board~~] construction/renovation projects are to be bid competitively with bids being opened publicly in the office of the commission [~~board~~] or another location designated in the bid advertisement and in the bid documents.

(b) The staff shall place advertisement [~~Advertisement~~] for bids [~~is placed by the board staff~~] in not less than two newspapers of general circulation far enough in advance of the bid opening date to allow bidders [~~bidder~~] time to secure and examine bid documents and to prepare a bid therefrom.

(c) Upon determination by the staff that a project for repair, rehabilitation, or renovation is of an emergency nature necessary to prevent or remove a hazard to life or property, the staff may issue a bid advertisement for such emergency project less than 30 days in advance of bid opening date.

(d) Upon determination by the staff that, in order to prevent undue additional costs to a state agency, it is necessary that a project for repair, rehabilitation, or renovation commence within a time frame which does not permit normal bidding procedures to be utilized, the staff may issue a bid advertisement for such project less than 30 days in advance of bid opening date.

(e) [~~(c)~~] Advertisement for bids shall contain pertinent information on the project, including name and location of the project; date, time, and place of the bid opening[~~;~~] and pre-bid conference; where and how bid documents may be obtained; and a listing of the requirements of the contractor for submitting the bid.

(f) [~~(d)~~] To eliminate the expense of bid preparation by a contractor not qualified to perform the work, a contractor must secure the permission of the [~~board~~] staff to obtain bidding documents prior to receiving these documents.

(g) [~~(e)~~] All bids submitted must be accompanied by [~~either~~] bid bond, cashier's check, or certified check in the amount indicated in the Invitation for Bid and Instructions to Bidders and a Surety's Commitment to provide a Performance and Payment Bond if awarded the contract . [~~of 5.0% of the bid submitted~~]

(h) [~~(f)~~] A bid proposal must submitted on the form, or a clear reproduction thereof, provided with the bid documents.

(i) [~~(g)~~] Bids should be submitted in sealed envelopes externally identified as to content, including project name and number, bid opening date, and name and address of bidder. Failure to identify sealed envelopes containing bid proposal(s) will not disqualify a bid but may increase the possibility of the bid being inadvertently misdirected and not officially received in proper time. [~~Special bid envelopes are provided by the board for this purpose. Failure to use the envelope will not disqualify a bid but may increase the possibility of the bid's being inadvertently misdirected and not officially received in proper time.~~] It is the sole responsibility of bidders to deliver proposals to the designated bid opening site prior to the time the bids are scheduled to be read. Any bid received after this time will be returned unopened to the bidder.

(j) [~~(h)~~] Bidding documents shall include the plans and specifications, including all addenda issued thereto. Bidders are assumed to have given full consideration to the entire content of any proposal submitted.

(k) Bids should be submitted in sealed envelopes externally identified as to content, including project name and number, bid opening date, and name and address of bidder. Failure to identify sealed envelopes containing bid proposal(s) will not disqualify a bid but may increase the possibility of the bid being inadvertently misdirected and not officially received in proper time. It is the sole responsibility of bidders to deliver proposals to the designated bid opening site prior to the time the bids are scheduled to be read. Any bid received after this time will be returned unopened to the bidder.

(l) Bidding documents shall include the plans and specifications, including all addenda issued thereto. Bidders are assumed to have given full consideration to the entire content of any proposal submitted.

§375.9. Contract Award.

(a) Formal award of construction contracts will be made by the [~~board~~] staff. Award will be based upon the lowest and best bid received from a qualified bidder.

(b) All advertised conditions, which bear upon the quality of a bid proposal, will be considered when making an award. The commission reserves the right to accept or reject all or any part of any bid, waive minor technicalities, waive any and all formalities of bidding and award the bid to best serve the interests of the state. The commission is not bound to accept the lowest bid or any proposal for this work or any part, and has the right to request new bids for the whole or any parts. [~~All advertised conditions which bear upon the quality of a bid proposal will be considered when making an award. The board reserves the right to reject any or all bids when in the best interest of the owner it is necessary to do so.~~]

(c) Award shall become effective upon the date that the commission formally accepts a bidder's proposal or any part [~~thereof is formally accepted by the board~~] and notice thereof is communicated to the successful bidder. A contract binding on both parties will exist from that date forward.

(d) Formal notice of award to the successful bidder shall be in writing and shall state the basis of award.

(e) The furnishing of any required bonds and insurance by the contractor is not prerequisite to award of a contract but constitutes a part of the work and must be provided before any work on the project site is initiated and before the [~~board~~] staff can issue a Notice to Proceed [~~work order~~].

(f) Contract documents will consist of the following:

(1) the contractor's proposal;

(2) the owner-contractor agreement;

(3) the conditions of the contract (general, supplementary general, and special conditions);

(4) the drawings and specifications;

(5) the notice and description of the award;

(6) the bidding documents;

(7) the advertisement and Invitation for Bids and Instructions to Bidders;

(8) all addenda to the plans and specifications issued prior to bid opening; and

(9) all change orders issued after execution of the contract.

[~~[(2) the notice and description of the award;]~~

[~~(3) the bidding documents;]~~

[~~(4) all addenda to the plans and specifications issued prior to bid opening; and]~~

[~~(5) all changes in the work made after award of the contract.]~~

§375.10. Construction Contract Administration.

(a) Upon completion of contract award procedures and the furnishing of all required insurance and bonds by the contractor, the board staff will issue a written work order to the contractor which establishes the starting and completion date of the contract.

(b) Prior to commencement of work on the contract, the [~~board~~] staff will schedule and hold a preconstruction conference to explain routine administrative procedures and answer any questions about the contract documents. This conference is for the benefit of the prime contractor, his subcontractors, and the A/E.

(c) All activities of a contractor on a project [~~for which he has a contract~~] shall be in accordance with the contract documents.

(d) Unless [~~expressly~~] modified because of job conditions peculiar to a specific project, procedures followed by the [~~board~~] staff in the administration of construction projects shall include the following.

(1) At the start of work, a contractor shall submit to the [~~board~~] staff for review a listing of [~~his major~~] subcontractors, and material suppliers and the name of the [~~his~~] job superintendent.

(2) At the start of work, a contractor shall submit to the [~~board~~] staff for approval a schedule of values [~~breakdown~~] of the material and labor costs of the various work items in the contract.

(3) The board staff will review all submittals, shop drawing, and schedules required by the specifications before final approval is given thereon.

(4) The board staff will periodic on-site inspections of work in progress as it deems necessary and may assign a full-time inspector

to a project if justified by its size and nature. An official owner's final inspection is conducted at the completion of each project.

(5) Partial payments for work performed are made monthly. Request for payment must be submitted on [~~state~~] construction voucher forms supplied by the [~~board~~] staff and must include the project schedule of values [~~cost breakdown~~] as approved at the start of the project.

(6) Changes in the work on a construction project are not official until the staff has [~~they have been~~] formally approved them [~~by the board staff~~]. The staff [~~owner~~] shall provide necessary forms for documenting all changes in the work.

(7) Changes in the contract time [~~tie~~] of a construction project are not official until approved by the [~~board~~] staff. Forms [~~Necessary forms~~] for documenting [~~reasons for~~] time extension requests are provided by the staff [~~contractor~~].

(8) After a final inspection has been completed [~~held~~] and the [~~board~~] staff is satisfied that all conditions of the contract have been met, the contractor may submit a [~~his~~] request for final payment.

(9) The contractor must warrant all materials and labor incorporated into a project against failure for a period of one year from the date of substantial completion [~~acceptance of the project by the board staff~~]. Extended warranties are required on specific items of work.

(10) At the end of the warranty period, a warranty inspection will be conducted, and any discrepancies found which are not beyond the contractor's control shall become the contractor's responsibility to correct. It is also the contractor's responsibility to make corrections of discrepancies as they occur during the warranty period when notified of such. [~~At the end of the warranty period, a warranty inspection will be held, and failures found which are not attributable to owner/user misuse or to acts of God beyond the contractor's control shall become the contractor's control shall become the contractor's responsibility to correct. It is his further responsibility to make corrections of failures as they occur during the warranty period when brought to his attention.~~]

(11) An A/E retained for professional services on a construction project is a representative of the commission [~~board~~] and is the person to whom the contractor should go when initiating any of the procedures in paragraphs (1)-(10) of this subsection or when project conditions require owner approval or action.

§375.11. State of Texas Uniform General Conditions (UGC).

(a) The Texas Military Facilities Commission (TMFC) adopts by reference the State of Texas Uniform General conditions as they appear in 1 TAC Chapter 123 on the effective date thereof.

(b) Changes in the UGC may be made by the TMFC when circumstances arise making applicability of any provision of the document either illegal or clearly impractical. On Federally funded projects, the TMFC may waive, suspend or modify any Article in the Uniform General Conditions or the Supplementary General Conditions which conflict with any Federal statute, rule, regulation or procedure, where such waiver, suspension or modification is essential to receipt by the TMFC of such Federal funds for the project. In the case of any project wholly financed by Federal funds, and standards required by the enabling Federal statute, or any Federal rules, regulations or procedures adopted pursuant thereto, shall be controlling, but shall not weaken the character or intent of the Uniform General Conditions or the Supplementary General Conditions.

[~~(a) Texas Civil Statutes, Article 601b, §5.26, holds the state purchasing and general services commission responsible for periodic review of the State of Texas Uniform General Conditions, and holds all state agencies responsible for use of any changes to the UGC resulting from such review.~~]

[~~(b) All review procedures shall be in accordance with the provisions of Texas Civil Statutes, Article 601b, §5.26(b).~~]

[~~(c) Emergency changes in the UGC may be made by the state purchasing and general services commission when any circumstances arises making applicability of any provision of the document either illegal or clearly impractical.~~]

(c) [~~(d)~~] Changes in the UGC either as a result of formal review or emergency will be submitted to the Office of the Attorney General for review of legal sufficiency [~~are distributed to all contracting authorities of the State of Texas~~].

(d) [~~(e)~~] The UGC are applicable to all building construction contracts entered into by the TMFC, [~~agencies of the state,~~] which is [~~are~~] solely responsible for any consequences resulting from the [~~their~~] use of the documents [~~document~~].

(e) [~~(f)~~] The commission[~~board~~] staff is responsible for compliance with all state statutes or regulations concerning the application of the UGC.

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 August 7, 2000.

TRD-200005451
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 406-6971

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §362.1, concerning Definitions. The amendment will add definitions for terms which are used in the rules, but which are not defined. The new definition is added for Endorsement, a term used in licensing.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of terms used in the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this amended section.

§362.1. Definitions.

The following words, terms, and phrases, when used in this part, shall have the following meaning, unless the context clearly indicates otherwise.

(1) Act--The Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851.

(2) AOTA--American Occupational Therapy Association.

(3) Applicant--A person who applies for a license to the Texas Board of Occupational Therapy Examiners.

(4) Application Review Committee--Reviews and makes recommendations to the board concerning applications which require special consideration.

(5) Board--The Texas Board of Occupational Therapy Examiners (TBOTE).

(6) Certified Occupational Therapy Assistant (COTA)--An alternate term for a Licensed Occupational Therapy Assistant. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and must practice under the general supervision of an OTR or LOT. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(7) Class A Misdemeanor--An individual adjudged guilty of a Class A misdemeanor shall be punished by:

(A) a fine not to exceed $3,000;

(B) confinement in jail for a term not to exceed one year; or

(C) both such fine and imprisonment (Vernon's Texas Codes Annotated, Penal Code, §12.21).

(8) Close Personal Supervision--Implies direct, on-site contact whereby the supervising OTR, LOT, COTA or LOTA is able to respond immediately to the needs of the patient.

(9) Complete Application--Notarized application form with photograph, license fee, jurisprudence examination with at least 70% of questions answered correctly and all other required documents.

(10) Complete Renewal--Contains renewal fee, home/work address(es) and phone number(s), jurisprudence examination with at least 70% of questions answered correctly and supervision log (if applicable).

(11) Consultation--The provision of occupational therapy expertise to an individual or institution. This service may be provided on a one time only basis or on an ongoing basis.

(12) Continuing Education Committee--Reviews and makes recommendations to the board concerning continuing education requirements and special consideration requests.

(13) Continuing Supervision, OT--Includes, at a minimum, the following:

(A) Frequent communication between the supervising OTR or LOT and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned to the OT.

(B) Face-to-face encounters twice a month where the OTR or LOT directly observes the temporary licensee providing OT services to one or more patients/clients.

(14) Continuing Supervision, OTA--Includes, at a minimum, the following:

(A) Frequent communication between the supervising OTR or LOT and the temporary licensee by telephone, written report or conference, including the review of progress of patients/clients assigned to the OTA.

(B) Face-to-face encounters twice a month where the OTR or LOT directly observes the temporary licensee providing OT services to one or more patients/clients.

(C) Sixteen hours of supervision per month must be documented for a full-time OTA. A part-time OTA may prorate the documented supervision, but shall document no less than eight hours per month.

(15) Coordinator of Occupational Therapy Program--The employee of the Executive Council who carries out the functions of the Texas Board of Occupational Therapy Examiners.

(16) Direct Service--Refers to the provision of occupational therapy services to individuals to develop, improve, and/or restore occupational functioning.

(17) Endorsement--The process by which the board issues a license to a person currently licensed in another state, the District of Columbia, or territory of the United States that maintains professional standards considered by the board to be substantially equivalent to those set forth in the Act, and is applying for a Texas license for the first time.

(18) [~~(17)~~] Evaluation--Refers to a process of determining an individual's status for the purpose of determining the need for occupational therapy services or for implementing a treatment program.

(19) [~~(18)~~] Examination--The Examination as provided for in Section 17 of the Act. The current Examination is the initial certification Examination given by the National Board for Certification in Occupational Therapy (NBCOT).

(20) [~~(19)~~] Executive Council--The Executive Council of Physical Therapy and Occupational Therapy Examiners.

(21) [~~(20)~~] Executive Director--The employee of the Executive Council who functions as its agent. The Executive Council delegates implementation of certain functions to the Executive Director.

(22) [~~(21)~~] First Available Examination--Refers to the first scheduled Examination after successful completion of all educational requirements.

(23) [~~(22)~~] General Supervision--Includes, at a minimum, the following:

(A) Frequent communication between the supervising OTR or LOT and the regular or provisional COTA or LOTA by telephone, written report or conference, including the review of progress of patients/clients assigned to the COTA or LOTA.

(B) Eight hours of supervision per month must be documented for a full-time COTA or LOTA. Twenty-five percent of the required documented supervision time must consist of face-to-face encounters where the OTR or LOT directly observes the COTA or LOTA providing OT services to one or more patients/clients.

(C) A part-time COTA or LOTA may prorate the documented supervision.

(24) [~~(23)~~] Health Care Condition-See Medical Condition.

(25) [~~(24)~~]Investigation Committee--Reviews and makes recommendations to the board concerning complaints and disciplinary actions regarding licensees and facilities.

(26) [~~(25)~~] Investigator--The employee of the Executive Council who conducts all phases of an investigation into a complaint filed against a licensee, an applicant, or an entity regulated by the board.

(27) [~~(26)~~] Jurisprudence Examination--An examination covering information contained in the Texas Occupational Therapy Practice Act and Texas Board of Occupational Therapy Examiners rules. This test is an open book examination made up of multiple choice and/or true-false questions. The passing score is 70%.

(28) [~~(27)~~] License--Document issued by the Texas Board of Occupational Therapy Examiners which authorizes the practice of occupational therapy in Texas.

(29) [~~(28)~~] Licensed Occupational Therapist (LOT)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapist in Texas.

(30) [~~(29)~~] Licensed Occupational Therapy Assistant (LOTA)--A person who holds a valid regular or provisional license to practice or represent self as an occupational therapy assistant in Texas and who is required to practice under the general supervision of an OTR or LOT.

(31) [~~(30)~~] Medical Condition--A condition of acute trauma, infection, disease process, psychiatric disorders, addictive disorders, or post surgical status. Synonymous with the term health care condition.

(32) [~~(31)~~] Monitored Services--The checking on the status/condition of students, patients, clients, equipment, programs, services, and staff in order to make appropriate adjustments and recommendations. Minimum contact for the purpose of monitoring will be one time a month.

(33) [~~(32)~~] NBCOT (formerly AOTCB)--National Board for Certification in Occupational Therapy (formerly American Occupational Therapy Certification Board).

(34) [~~(33)~~] Non-Medical Condition--A condition where the ability to perform occupational roles is impaired by developmental disabilities, learning disabilities, the aging process, sensory impairment, psychosocial dysfunction, or other such conditions which does not require the routine intervention of a physician.

(35) [~~(34)~~] Occupational Therapist (OT)--A person who holds a Temporary License to practice as an occupational therapist in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(36) [~~(35)~~] Occupational Therapist, Registered (OTR)--An alternate term for a Licensed Occupational Therapist. An individual who uses this term must hold a regular or provisional license to practice or represent self as an occupational therapist in Texas. An individual who uses this term is responsible for ensuring that he or she is otherwise qualified to use it.

(37) [~~(36)~~] Occupational Therapy--The use of purposeful activity or intervention to achieve functional outcomes. Achieving functional outcomes means to develop or facilitate restoration of the highest possible level of independence in interaction with the environment. Occupational Therapy provides services to individuals limited by physical injury or illness, a dysfunctional condition, cognitive impairment, psychosocial dysfunction, mental illness, a developmental or learning disability or an adverse environmental condition, whether due to trauma, illness or condition present at birth. Occupational therapy services include but are not limited to:

(A) the evaluation/assessment, treatment and education of or consultation with the individual, family or other persons;

(B) interventions directed toward developing, improving or restoring daily living skills, work readiness or work performance, play skills or leisure capacities;

(C) intervention methodologies to develop restore or maintain sensorimotor, oral-motor, perceptual or neuromuscular functioning; joint range of motion; emotional, motivational, cognitive or psychosocial components of performance.

(38) [~~(37)~~] Occupational Therapy Assistant (OTA)--A person who holds a Temporary License to practice as an occupational therapy assistant in the state of Texas, who is waiting to receive results of taking the first available Examination, and who is required to be under continuing supervision of an OTR or LOT.

(39) [~~(38)~~] Occupational Therapy Plan of Care--A written statement of the planned course of Occupational Therapy intervention for a patient/client. It must include goals, objectives and/or strategies, recommended frequency and duration, and may also include methodologies and/or recommended activities.

(40) [~~(39)~~] OT Aide or OT Orderly--A person who aids in the practice of occupational therapy and whose activities require on-the-job training and close personal supervision by an OTR, LOT, COTA or LOTA.

(41) [~~(40)~~] Place(s) of Business--Any facility in which a licensee practices.

(42) [~~(41)~~] Practice--Providing occupational therapy as a clinician, practitioner, educator, or consultant. Only a person holding a license from TBOTE may practice occupational therapy in Texas.

(43) [~~(42)~~] Provisional License--A license issued by TBOTE to an applicant who holds a valid license in good standing from another state, District of Columbia, or territory of the United States requesting licensure; or a license issued to an applicant who has passed the Examination and who has been employed as an OTR, LOT, COTA or LOTA within five years of the receipt date of current, complete application for licensure with TBOTE.

(44) [~~(43)~~] Recognized Educational Institution--An educational institution offering a course of study in occupational therapy that has been accredited or approved by the American Occupational Therapy Association.

(45) [~~(44)~~] Regular License--A license issued by TBOTE to an applicant who has met the academic requirements and who has passed the Examination.

(46) [~~(45)~~] Rules--Refers to the TBOTE Rules.

(47) [~~(46)~~] Screening--A process or tool used to determine a potential need for occupational therapy interventions. This information may be compiled using observation, medical or other records, the interview process, self-reporting, and/or other documentation.

(48) [~~(47)~~]Temporary License--A license issued by TBOTE to an applicant who meets all the qualifications for a license except taking the first available Examination after completion of all education requirements; or a license issued to an applicant who has passed the Examination but has not been employed as an OTR, LOT, COTA or LOTA for five years or more from the receipt date of current, complete application for licensure with TBOTE.

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 August 7, 2000.

TRD-200005448
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 305-6900

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CHAPTER 364. REQUIREMENTS FOR LICENSURE

The Texas Board of Occupational Therapy Examiners proposes the repeal of §364.1 and proposes new §§364.1-364.4, concerning Requirements for Licensure.

The repealed section is being replaced by new sections §364.1 Requirements for Licensure, §364.2 Initial License by Examination, §364.3 Temporary License, and §364.4 License by Endorsement. The repeal of this section and the adoption of the replacement will restructure licensing procedure rules and update description of the requirements for licensure, reflecting changes to the procedures. They also make administrative procedures for OT and PT application and licensure as uniform as possible to achieve greater administrative efficiency.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections as proposed.

Mr. Maline also has determined that for each year of the first five years the rules are in effect the public benefit anticipated as a result of enforcing the rules will be clarification of easier comprehension of the application and licensure process, and greater administrative efficiency. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposed rules may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; email: augusta.gelfand@mail.capnet.state.tx.us

40 TAC §364.1

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

The repeal is proposed under the Occupational Therapy Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this repeal.

§364.1. Requirements for Licensure

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 August 7, 2000.

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John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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40 TAC §§364.1 - 364.4

The new rules are proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by these new rules.

§364.1. Requirements for Licensure

(a) All applicants shall:

(1) submit a complete, notarized application form with a recent passport-type color photograph of the applicant;

(2) submit a non-refundable application fee as set by the Executive Council;

(3) submit a successfully completed board jurisprudence examination on the Texas Occupational Therapy Practice Act and board rules;

(4) Have completed an accredited OT/OTA program;

(5) Have completed supervised fieldwork experience, a minimum of 6 months for OT and 2 months for OTA.

(b) If an applicant has not passed the national licensure examination, the applicant must also meet the requirement in §364.2 of this title (relating to License by Examination).

(c) If the applicant is licensed as an OTR or COTA in another state or jurisdiction of the U.S., the applicant must also meet the requirements as stated in §364.4 of this title (relating to License by Endorsement)

(d) An application for license is valid for one year after the date it is received by the board.

(e) An applicant who submits an application containing false information may be denied a license by the board.

(f) Should the board reject an application for a license, the reasons for the rejection will be communicated in writing to the applicant. The applicant may submit additional information and request reconsideration by the Board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act.

(g) Applicants and licensees must notify the board in writing of changes in name, residential address, and work address within 30 days of the change.

(h) The Board will issue a replacement copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. For a name change, the appropriate fee and a copy of the legal document (marriage certificate, divorce decree) enacting the name change must accompany the request.

(i) The first regular license is valid from the date of issuance until the last day of the applicant's next birth month. If the applicant's birth month is within 90 days after the license is issued, the license will be valid until the last day of the birth month in the following year. An initial license will be valid no less than 4 months, no longer than 15 months.

§364.2. Initial License by Examination

(a) An applicant applying for license by examination must:

(1) meet all provisions for §364.1 of this title (relating to Requirements for a License); and

(2) pass the NBCOT certification examination for occupational therapists or occupational therapy assistants with a score set by NBCOT. Score reports must be sent to the Board by NBCOT or their score reporting service.

(b) Upon receiving the test scores from NBCOT the Board will automatically issue a regular license to the applicant with a passing score.

(c) An applicant who fails an examination may take a second examination by submitting a new application and fee.

(1) An applicant who fails the second examination may take a third examination after a specific period of not longer than one year if the applicant meets the requirements prescribed for a previous examination.

(2) An applicant who fails the third examination may take an additional test at the board's discretion.

§364.3. Temporary License.

(a) The Board will issue a temporary license to an applicant who is taking the exam for the first time. An applicant who has received a license from another state is not eligible for a temporary license.

(b) To be issued a temporary license, the applicant must:

(1) meet all provisions of §364.1 of this title (relating to Requirements for a License);

(2) meet all provision of §364.2 of this title (relating to License by Examination);

(3) submit the Confirmation of Examination Registration and Eligibility to Examine form from NBCOT, which must be sent directly to the board by NBCOT;

(4) submit a signed Verification of Supervision form as provided by the board;

(5) send the board the application fee as set by the Executive Council.

(c) If the applicant fails to take the first available examination, or fails to have the scores reported, the temporary license will be revoked.

(d) If the applicant fails the examination, the temporary license is void and must be returned. No second temporary licenses are issued after failure of the examination.

§364.4. License by Endorsement

(a) The board may issue a license by endorsement to applicants currently licensed in another state, District of Columbia or territory of the United States. Previous Texas licensees are not eligible for License by Endorsement. An applicant seeking endorsement must:

(1) meet all provisions for §364.1 of this title (relating to Requirements for License);

(2) arrange to have NBCOT's Verification of Certification form sent directly to the board;

(3) submit verification of license in good standing from the state(s) in which the applicant is currently licensed. This must be an original verification sent directly by the licensing board in that state, or,

(4) if applying from a non-licensing state, submit a Verification of Employment form showing the two most recent years of employment.

(b) Provisional License: The Board may grant a Provisional License prior to an applicant who is applying for License by endorsement if there is an unwarranted delay in the submission of required documentation outside the applicant control. All other requirements for requirements for a license by endorsement must be met. The applicant must also submit the Provisional License fee as set by the Executive Council, and notarized proof of sponsorship by a licensee of this board, before the license may be issued. The Board may not grant a provisional license to an applicant with disciplinary action in their license history, or to an applicant with pending disciplinary action.

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

Filed with the Office of the Secretary of State, on August 7, 2000.

TRD-200005446
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 305-6900

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CHAPTER 365. TYPES OF LICENSES

40 TAC §365.1

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

The Texas Board of Occupational Therapy Examiners proposes the repeal of §365.1, concerning Types of Licenses. The language of this chapter will be contained in Chapter 364.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there

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

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this repeal.

§365.1. Types of Licenses

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 August 7, 2000.

TRD-200005450
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 305-6900

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CHAPTER 366. APPLICATION FOR LICENSE

40 TAC §366.1

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

The Texas Board of Occupational Therapy Examiners proposes the repeal of §366.1, concerning Types of Licenses. The language of this chapter will be contained in Chapter 364.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be clarification of the OT rules. There will be no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed rule may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701.

The repeal is proposed under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subchapter H, Chapter 454 of the Occupations Code is affected by this repeal.

§366.1. Application For 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 August 7, 2000.

TRD-200005449
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: September 17, 2000
For further information, please call: (512) 305-6900

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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 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS NATURAL RESOURCE CONSERVATION COMMISSION

CHAPTER 14. GRANTS

30 TAC §§14.11, 14.13, 14.14

The Texas Natural Resource Conservation Commission has withdrawn from consideration proposed new §§14.11, 14.13, and 14.14, which appeared in the May 5, 2000, issue of the *Texas Register* (25 TexReg 3913).

Filed with the Office of the Secretary of State on August 3, 2000.

TRD-200005430
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Effective date: August 3, 2000
For further information, please call: (512) 239-4712

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 343. STANDARDS FOR JUVENILE PRE-ADJUDICATION SECURE DETENTION FACILITIES

37 TAC §343.8

The Texas Juvenile Probation Commission has withdrawn from consideration a proposed amendment to §343.8, which appeared in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2318).

Filed with the Office of the Secretary of State on August 2, 2000.

TRD-200005396
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: August 2, 2000
For further information, please call: (512) 424-6710

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37 TAC §343.9

The Texas Juvenile Probation Commission has withdrawn from consideration a proposed amendment to §343.9, which appeared in the March 17, 2000, issue of the *Texas Register* (25 TexReg 2319).

Filed with the Office of the Secretary of State on August 2, 2000.

TRD-200005397
Lisa Capers
Deputy Executive Director and General Counsel
Texas Juvenile Probation Commission
Effective date: August 2, 2000
For further information, please call: (512) 424-6710

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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 20. COTTON PEST CONTROL

The Texas Department of Agriculture (the department) adopts amendments to §20.1, §20.22, and new §20.23, all concerning cotton pest control, and the repeal §20.4, concerning an expiration provision for Chapter 20, without changes to the proposal published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6013).

The amendments to §20.1 and new §20.23 are adopted to assist no-till cotton farmers in complying with the stalk destruction requirements under the Texas Agriculture Code (the Code) Chapter 74; Subchapter A. The amendments will provide an opportunity for cotton producers to practice no-till farming on a voluntary basis while complying with the department's stalk destruction requirements. The advantages of no-till farming include improved soil and water conservation. The current regulations do not allow for the use of a no-till farming approach toward meeting the cotton stalk destruction requirements. Section 20.1 defines terms used in Chapter 20, and is amended to include definitions of the terms "no-till fields" as new §20.1(17) and "non-hostable cotton" as §20.1(18). Definitions following these new definitions have been renumbered accordingly. New §20.23 provides exceptions for no-till cotton in meeting cotton stalk destruction requirements. Growers will be required to provide advance notification of no-till cotton fields to the department prior to destruction deadlines and comply with the department requirements by rendering cotton plants non-hostable to boll weevils.

Amended §20.22 will provide greater flexibility for the Cotton Producers Advisory Committee in a zone to request a blanket extension of the cotton stalk destruction deadlines. Allowing the chairman of a Cotton Producers Advisory Committee to request an extension to a cotton stalk destruction deadline will facilitate and improve the process of granting extensions on a timely basis. The amendment adds new §20.22(c)(2), which authorizes the department to grant a blanket extension of the cotton stalk destruction deadline set for a zone or a portion of a zone upon written request of the producer advisory committee, authorized and signed by a majority of the committee, or in response to a written request by the chairman of the cotton producer advisory committee or his designee, or in response to a significant number of individual written requests for individual extensions as a result of an extreme weather event.

The department also adopts the repeal of §20.4, concerning an expiration date for Chapter 20. The repeal of §20.4 is adopted because the establishment of an expiration date for Chapter 20 is no longer necessary due to the enactment of legislation establishing a timeframe for review of agency rules. The repeal of §20.4 eliminates the expiration date of Chapter 20.

No comments were received on the proposal.

SUBCHAPTER A. GENERAL PROVISIONS

4 TAC §20.1

The amendments to §20.1 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

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 August 7, 2000.

TRD-200005436
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 27, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-4075

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4 TAC §20.4

The repeal of §20.4 is adopted in accordance with the Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for administration of the Code.

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 August 7, 2000.

TRD-200005437

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 27, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-4075

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SUBCHAPTER C. STALK DESTRUCTION PROGRAM

4 TAC §20.22, §20.23

The amendments to §20.22 and new §20.23 are adopted in accordance with the Texas Agriculture Code (the Code), §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, Subchapter A; and §74.004 which provides the department with the authority to establish regulated areas, dates and appropriate methods of destruction of stalks, other parts, and products of host plants for cotton pests.

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 August 7, 2000.

TRD-200005438
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 27, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-4075

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PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 43. TUBERCULOSIS

SUBCHAPTER A. CATTLE

4 TAC §43.1

The Texas Animal Health Commission adopts the amendments to Chapter 43, §43.1, concerning Tuberculosis with changes to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 4994). The text will be republished. This adopts amendments to §43.1 which provides for indemnity paid on cattle exposed or infected with tuberculosis.

The following changes were made to §43.1(o)(1)(B). It now reads $100 for each negative, exposed animal slaughtered as a result of a whole herd depopulation.

The commission has the authority to pay an indemnity to the owner of livestock exposed to or infected with a disease if the commission considers it necessary to eradicate the disease and to dispose of the exposed or diseased livestock. The adopted amendment will increase the amount of indemnity currently paid by the commission for dairy cattle exposed or infected with tuberculosis which more closely approximates the fair market value or appraisal value for a dairy cow that has tuberculosis or is exposed to tuberculosis. The reason for this change is to allow the commission to act quickly in response to a disease outbreak by providing a fair and adequate indemnity. The amendment provides for eligibility for compensation, amounts of compensation, and limits and restrictions on compensation. Also, in order to insure that the commission's share of the indemnity is able to approximate the fair market value, the commission is proposing $1,000. The current rule provides that the indemnity will not exceed the federal share of the indemnity. That limitation was reflected in a specific statutory provision for tuberculosis which was repealed last legislative session when the commission got the broader indemnity authority found in §161.058 of the Agriculture Code. The commission also added language to the indemnity provision for herd depopulation agreements, found at subsection (o)(1)(B), in order to insure that it was for animals that tested negative, but were exposed to other animals in the herd which were positive. Also, the commission deleted the current date contained in the rule because it is no longer applicable.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the Texas Agriculture Code, Chapter 161, §161.058 which authorizes the commission to adopt rules related to indemnity for exposed or diseased livestock. Also, §161.041 (a) and (b), as well as §161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code.

§43.1. Cattle (All Dairy and Beef Animals, genus Bos), and Bison (genus Bison).

(a) Exposed to or infected with. Whenever the Texas Animal Health Commission has reason to believe that any livestock has been exposed to or is infected with tuberculosis, that premises and all livestock thereon shall be quarantined subject to the tuberculin test.

(b) Who may administer tuberculin test. Tuberculin tests shall be conducted by a veterinarian employed by the Texas Animal Health Commission or the United States Department of Agriculture or by an accredited veterinarian. All tests are official tests and must be reported to the Texas Animal Health Commission on VS Form 6-22 and continuation sheet VS Form 6-22B or an official health certificate. Accredited veterinarians are permitted to use only the .1cc caudal fold test.

(c) Restraint. Each animal must be effectively restrained by use of halter, nose lead, squeeze gate, or chute, or other methods expedient to the prevailing situation. A good injection is imperative and the animal must be properly restrained in order to carry out this procedure correctly.

(d) Identification. All animals tested must be permanently individually identified by eartag, tattoo, or fire brand. Chain numbers are not acceptable.

(e) Equipment. Needles used in applying the tuberculin test will be limited exclusively to those of 26 gauge and 3/8 inch exposure. Syringe shall be a tuberculin syringe.

(f) Site of injection. In routine testing the caudal fold shall be the site of injection. Cervical tests will be used only by regulatory veterinarians.

(g) Procedure for injection.

(1) Caudal fold. Prior to injection, examine the caudal fold for any abnormalities that may confuse the interpretation of the test. Note and point them out to the owner. When necessary, clean the site

with dry cotton or cotton moistened with alcohol and, in routine testing, inject .1cc of tuberculin intradermally into the precleaned site. In making the injection, extreme care must be taken to assure intradermal inoculation of tuberculin. Substantially all of the exposed needle should be inserted to prevent leakage of the tuberculin at the injection site. The syringe and needle must be maintained in a clean condition. This can be done by using dry cotton to remove all foreign matter from the needle and syringe. This procedure requires very little time and will help reduce the possibility of an abscess which might confuse the reading.

(2) Single cervical. The injection site is the preclipped side of the neck in the middle third of the distance between the point of the shoulder and the angle of the jaw, on a line parallel to the spine of the scapula. Inject .1cc of tuberculin intradermally in the center of the clipped area.

(3) Comparative cervical. M. avian and m. bovis balanced PPD tuberculin is injected intradermally into two separate preclipped areas of the neck. The upper site (avian PPD) is about four inches below the crest of the neck, the lower site (bovine PPD) is five inches below the upper site.

(h) Dosage. One-tenth cubic centimeter (.1cc) of tuberculin is used for routine caudal fold testing and for testing of herds under quarantine that have not had m. bovis lesion reactors revealed in it. Two-tenths cubic centimeter (.2cc) of tuberculin is used by regulatory veterinarians in herds that have had m. bovis lesion reactors revealed in it or on individual animals from an m. bovis herd. Dosage for comparative cervical testing will be .1cc of balanced m. bovis and m. avian tuberculins.

(i) Observation. Careful consideration must be given to the observation of each animal. It is essential that the site of injection on the properly restrained animal be carefully examined by palpation or measurement approximately 72 hours following injection. Visual observation only of animals can in no way be considered an acceptable procedure.

(j) Reporting extent of reaction with symbols--caudal fold. Tissue disturbance may vary from those barely perceptible to a swelling the size of a fist or larger. The response may be hard and circumscribed or soft and diffused with no distinct demarcation. The size, shape, or consistency of the tissue response does not reflect the degree of infection. The interpretation and classification of tuberculin responses, therefore, must be based on the professional judgment of the testing veterinarian. The following are guidelines for classification of cattle tested with the caudal fold test.

(1) Reactor "R"--Animals showing a circumscribed swelling 5mm. in diameter (3/16 of an inch) (P_1) or a diffuse swelling twice as thick as the normal caudal fold (X_2) or greater response to tuberculin on routine test should be classified as reactors unless in the professional judgment of the testing veterinarian a suspect classification is justified.

(2) Suspect "S"--Animals showing a response to tuberculin not classified as reactor with the exception noted below.

(3) Negative "N"--Animals showing no response to tuberculin or those animals with responses which have been classified negative for m. bovis by the comparative cervical tuberculin test.

(4) Single cervical.

(A) Reactor "R"--Animals showing any swelling at the injection site.

(B) Negative "N"--Animals showing no swelling at the injection site.

(5) Comparative cervical test. The skin thickness of each site of each animal is recorded. The preinjection measurement of each animal is then subtracted from the post-injection measurement and the difference for each site is determined. This "skin" thickness difference value is plotted on the scattergram, VS Form 6-22D. Any animal in the suspect zone on the consecutive comparative cervical test will be classified Reactor "R." The classification of each animal will be according to the zone into which the results are graphed.

(A) Negative "N."

(B) Suspect "S."

(C) Reactor "R."

(k) Reporting of tuberculin tests. A report of all tuberculin tests, including the individual identification of each animal of eartag number or tattoo age, sex, and breed, and a record of the size of the responses, shall be submitted promptly to the Texas Animal Health Commission.

(l) Requirements. When suspects are classified using the caudal fold test, the following requirements are to be accomplished.

(1) Report suspects on test chart with a classification of tuberculin responses and forward chart to Texas Animal Health Commission promptly.

(2) Inform the owner that:

(A) as a result of this test, the suspect shall be quarantined to the premise. This quarantine will be issued by the testing veterinarian;

(B) it is recommended that the suspect animals be isolated from the remainder of the herd. If this is a dairy herd, it is also recommended that these animals be milked last;

(C) if the herd owner desires to sell the suspect(s), the testing veterinarian must contact the Texas Animal Health Commission, who will issue a VS Form 1-27 permit for movement of these animals direct to slaughter at a plant under veterinary inspection;

(D) all suspects will be retested within 10 days by the comparative cervical test or in 60 to 90 days utilizing the comparative cervical test or caudal fold test by a representative of the Texas Animal Health Commission. This representative will contact the owner to set a test date; and

(E) no indemnity will be paid on animals in the suspect classification.

(m) Handling the caudal fold suspect herd.

(1) If the suspects are negative on retest, all restrictions are removed.

(2) If the caudal fold suspects are slaughtered and have no gross lesions of tuberculosis, all restrictions are removed.

(3) Any suspect to the comparative cervical test that is slaughtered with no gross lesions shall be considered as negative. Suspects to the comparative cervical test that are not slaughtered will be retested in 60 to 90 days and if they are negative all restrictions are removed. If the suspect remains a suspect, the animal will be classed as a reactor and branded.

(4) Reactors to the comparative cervical test will be branded and tagged and sold direct to slaughter.

(n) Disposal of reactors. All animals classified as tuberculin reactors must have a red reactor tag placed in the left ear and a fire brand "T" at least two by two inches in size, high on the left hip near

the tailhead. A representative of the Texas Animal Health Commission will:

(1) issue a permit to ship reactor animals direct to slaughter. Reactor animals must be slaughtered within 15 days of classification;

(2) complete indemnity claims (VS Form 1-23). If more than seven animals are involved, make all individual entries on continuation sheets (VS Form 1-23A). If more than 10 animals are involved, a professional appraiser may be used;

(3) issue Texas Animal Health Commission disease quarantine;

(4) complete history and record sheet;

(5) complete statement of appraisal;

(6) arrange for cleaning and disinfecting;

(7) mail completed Station Form 6-2 (cleaning and disinfecting form);

(8) inform the owner that if he desires to sell any animals which are in the quarantined herd, he must write or phone the Texas Animal Health Commission to request a permit; and

(9) inform the owner that any animals added to his herd while under quarantine that are not kept apart from the rest of the herd are not eligible for federal indemnity if they should later react to the tuberculin test.

(o) Indemnification to cattle owners. After said reactors are slaughtered, the owner shall submit to the Texas Animal Health Commission a written statement made by said establishment showing the amount of salvage paid for each animal.

(1) Cattle that are slaughtered in compliance with the tuberculosis program or as a result of a response on an official test can be indemnified as follows. Subject to the availability of funds, the Commission will pay the owner the unreimbursed amount determined by deducting the salvage value and the federal indemnity from the appraised value not to exceed:

(A) 1,000 for each animal classified as a suspect or a reactor;

(B) $100 for each negative exposed animal slaughtered as a result of a whole herd depopulation.

(2) All animals in the herd must be tested for indemnity to be paid.

(3) All provisions of the law and the regulations of the Commission must be complied with for indemnity to be paid.

(p) Designated pens. Cattle exposed to tuberculosis may be moved into designated pens in feedlots provided they meet the following requirements.

(1) All cattle enter designated pens approved under and meeting the requirements set out in §35.1 of this title (relating to Definitions), and §35.1(r) of these regulations.

(2) All cattle must have been tested negative to tuberculosis within 60 days prior to placement in the designated pens.

(q) Retesting and release of quarantine.

(1) Sale of feeder calves from quarantined herds will be restricted. Feeder calves under 12 months of age that have passed a tuberculin test within 60 days may be permitted to move intrastate to a quarantined feedlot or designated pens in a feedlot.

(2) Herds in which mycobacterium bovis infection has been disclosed shall remain under quarantine and must pass two tuberculin tests at intervals of at least 60 days and one additional test after six months. The comparative cervical test will not be used in m. bovis herds except when approved by the executive director of the Texas Animal Health Commission. Minimum quarantine period shall be ten months from slaughter of lesion reactors.

(3) Herds in which NGL reactor(s) only occur and no evidence of mycobacterium bovis infection has been disclosed may be released from quarantine after a 60 day negative retest on the entire herd. This will be a .1cc caudal test. Any caudal fold responses may be retested using the comparative cervical test.

(4) Suspects in herds where only suspect animals are disclosed shall be quarantined to the premises until retest and classified negative or shipped direct to slaughter under permit. If no gross lesions at slaughter, quarantine will be released.

(r) Special retests of high-risk herds.

(1) In herds where mycobacterium bovis infection has been confirmed but the herd not depopulated, five annual tests on the entire herd, followed by two tests at three-year intervals, shall be applied following the release of quarantine.

(2) In a newly assembled herd on premises where a tuberculous herd has been depopulated, two annual herd tests shall be applied to all cattle; the first test to be applied approximately six months after assembly of the new herd. These tests shall be followed by two complete herd tests at three-year intervals. If the premises are vacated for one year, these requirements may be waived.

(s) 6-35 traceback (animals which show lesions which are compatible or suggestive with bovine TB at slaughter establishments). When a 6-35 is received on a herd, the entire herd must be quarantined and all cattle tested. The testing will be conducted by a representative of the Texas Animal Health Commission.

(1) If the entire herd is negative, the quarantine is released and no further testing will be required unless additional tracebacks are received.

(2) If the information is a direct trace to the herd, all responding animals will be classed as a reactor.

(3) If the information is an indirect trace, the comparative cervical test can be used on any responding animals.

(4) When a 6-35 report is traced back to a feedlot, no test will be conducted on the animals remaining in the feedlot. However, an extensive effort should be made to locate the herd of origin. Cattle in feedlots known to be exposed to tuberculous cattle shall be quarantined and shipped under permit directly to slaughter.

(t) Tuberculosis accredited herd.

(1) General provisions; definition. "Accredited herd"--An accredited herd is one which has passed at least two consecutive annual tuberculin tests and no other evidence of bovine tuberculosis has been disclosed; all testing is to be conducted at owner's expense.

(2) Accredited herd plan; animals to be tested. Testing of herds for accreditation or reaccreditation shall include all cattle over 24 months of age and any animals other than natural additions under 24 months of age. All natural additions shall be individually identified and recorded on the test report as members of herd at the time of the annual test.

(3) Herd additions. Herd additions must originate directly from one of the following:

(A) accredited herd.

(B) herd in an accredited free state.

(C) herd in a modified accredited area that has passed a herd test of all animals over 24 months of age within 12 months, and the individual animals for addition were negative to the tuberculin test conducted within 60 days.

(D) herd in a modified accredited area not meeting requirements of subparagraph (A), (B), or (C) of this paragraph, individual animals for addition must pass negative test within 60 days prior to entering the premises of the accredited herd and must be kept in isolation from all members of the accredited herd until negative to a test conducted after 60 days of date of entry. Animals added under subparagraphs (B) and (C) and this subparagraph shall not receive accredited herd status for sale purposes until they have been members of the herd at least 60 days and are included in a herd retest.

(4) Accreditation and reaccreditation. To qualify for accredited herd status, the herd must pass at least two consecutive annual tuberculin tests with no evidence of bovine tuberculosis disclosed. All animals must be a bona fide member of the herd. Qualified herd may be issued a certificate by the local state and federal officials. The accreditation period will be 12 months (365 days) from the anniversary date and not 12 months from the date of the reaccreditation test. To qualify for reaccreditation, the herd must pass an annual test within a period of ten to 14 months from the anniversary date.

(A) Modified Tuberculosis Accredited Area plan. The rules and regulations governing the Modified Tuberculosis Accredited Area Plan will be the Uniform Methods and Rules-bovine tuberculosis eradication, as adopted by the U.S. Animal Health Association and approved by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

(B) Accredited Free State Plan. The rules and regulations governing the Accredited Free State Plan will be uniform methods and rules-bovine tuberculosis eradication, as adopted by the U.S. Animal Health Association and approved by the Animal and Plant Health Inspection Service of the U.S. Department of Agriculture.

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 August 7, 2000.

TRD-200005467
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: August 27, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 719-0714

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CHAPTER 59. GENERAL PRACTICES AND PROCEDURES

4 TAC §59.8

The Texas Animal Health Commission adopts new §59.8 to Chapter 59, concerning General Practices and Procedures without changes to the proposed text as published in the June 2, 2000, issue of the *Texas Register* (25 TexReg 4995) and will not be republished. New §59.8 will provide, as a rule, the Memorandum of Understanding between the Texas Animal Health Commission (commission) and the Travis County Commissioners Court which memorializes an agreement to cooperate and communicate.

The Commission has the authority to enter into a Memorandum of Understanding with county commissioner courts for the purpose of checking health papers and permits of livestock during the course of a sheriff's or commission's duty. Travis County has several Sheriff's deputies who are dedicated to addressing livestock issues in Travis County and the memorandum of agreement is intended to improve cooperation of functions related to diseased livestock.

No comments were received regarding adoption of the new rule.

The new rules is adopted under the Texas Agriculture Code, Chapter 161. Section 161.052 authorizes the commission to enter into a joint memorandum of understanding with local authorities. Section 161.041(a) and (b), as well as §161.046 authorizes the Commission to promulgate rules in accordance with the Texas Agriculture Code. Section 161.003 provides that the commissioners court of each county shall cooperate with and assist the commission in protecting livestock, domestic animals, and domestic fowl from communicable diseases.

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 August 7, 2000.

TRD-200005488
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: August 27, 2000
Proposal publication date: June 2, 2000
For further information, please call: (512) 719-0714

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TITLE 16. ECONOMIC REGULATION

PART 3. TEXAS ALCOHOLIC BEVERAGE COMMISSION

CHAPTER 45. MARKETING PRACTICES SUBCHAPTER D. ADVERTISING AND PROMOTION--ALL BEVERAGES

16 TAC §45.106

The Texas Alcoholic Beverage Commission adopts amendments to §45.106 with changes to the text as originally published in the May 12, 2000, edition of the *Texas Register,* (25 TexReg 4269-4270). The text as published was changed by adding the last sentence to new subsection(j) of the rule.

Sections 102.07(e) and 108.061 of the Alcoholic Beverage Code allows members of the manufacturing tier of the alcoholic beverage industry to offer prizes to consumers through sweepstakes promotions so long as those promotions are simultaneously conducted in 30 or more states and no purchase or entry fee is required for participation in the sweepstakes. Such methods of product promotion are common throughout the country, although the promotion may award prizes by random chance or on the

basis of some demonstrated knowledge or skill by sweepstakes participants.

The amendment adopted to subsection(b) of the rule defines the statutory term "sweepstakes" to include either of these methods of awarding prizes. This definition comports with commonly accepted meanings of the word "sweepstakes" and allows industry members greater latitude in determining how best to promote their product. Moreover, the amendment comports with the relevant objectives of the Alcoholic Beverage Code in that there was no information before the commission indicating that allowing industry members to compete in this manner would have an adverse effect on public temperance or that such methods of competition would serve to establish tied-house relationships between the tiers.

The Coors of Longview beer distributorship announced in opposition to the amendments on the grounds that they would serve to allow large industry members to compete on terms which smaller members could not match. Further, this commenter expressed concern that contest style sweepstakes could be used as a means to establish tied-house relationships.

The commission disagreed with this comment. The statutory provisions cited above places conditions on sweepstakes promotions which many smaller producers cannot satisfy and the amendments adopted here do not alter those conditions. Also, while sweepstakes promotions have been lawful since 1993, the commission has no experience indicating that such promotions have been used to establish tied-house relationships. If sweepstakes promotions were to be used in this way in the future, that use would be regulated and constrained by §102.01(h) of the Alcoholic Beverage Code and perhaps other provisions of the code and rules of the commission.

The Wholesale Beer Distributors of Texas suggested that the rule be amended to distinguish between acceptable and unacceptable forms of contest in that contest style sweepstakes can be conducted in such a way as to benefit specific retailers contrary to the tied-house principles of the Alcoholic Beverage Code.

The commission disagreed with this comment in that manufacturers that conducted contest style sweepstakes to the benefit of a specific retailer would quite likely act in violation of §102.07(a)(2) and §102.15(1) of the Alcoholic Beverage Code and perhaps other provisions of the code and rules of the commission. Subsection (j) of the rule is adopted to make this constraint clear.

The Beer Alliance of Texas suggested that the rule be amended to require sweepstakes sponsors to place a definite and reasonable time limitation on specific promotions. The commission judged this to be an unnecessary restriction on industry members in that there is no information before the commission indicating that the duration of sweepstakes promotions has had an adverse effect on public temperance or inter-tier relations.

The Beer Alliance also suggested that sweepstakes sponsors be required to report proposed promotions to the agency prior to implementation in Texas. The commission disagreed with this suggestion because it would impose an unnecessary administrative burden on both industry members and agency staff. Typically, industry members capable of conducting a promotion in 30 states are also capable of determining the parameters of acceptable conduct under Texas law. Further, agency staff routinely gives informal advice about such matters to requesters. Finally, sweepstakes promotions are widely advertised to the public. Thus, there is only small likelihood that an unlawfully conducted sweepstakes would escape the attention of agency staff.

Anheuser-Busch commented that the amendments could be interpreted to preclude industry sponsorship of events offered by non-industry entities, such as charity events, rodeos, car races and boxing matches. Accordingly, Anheuser-Busch suggested removing the reference to "the sponsor" in subsection (b).

The commission determined this suggested amendment to be unnecessary. The rule clearly refers only to sweepstakes promotions sponsored by industry members under the authority of §102.07 and §108.061 of the Alcoholic Beverage Code. Other types of promotional activities are regulated by other provisions of the code and the commission's rules such as those cited above and §45.100 and §45.113. Those provisions are not affected by this rule amendment.

These amendments are adopted under Alcoholic Beverage Code, §5.31, which provides the commission with the authority to prescribe and publish rules necessary to carry out the provisions of the Alcoholic Beverage Code.

Cross Reference: Alcoholic Beverage Code,§102.07 and §108.061, are affected by this rule.

§45.106. Sweepstakes and Games of Chance.

(a) This rule relates to §102.07 and §108.061 of the Alcoholic Beverage Code.

(b) For purposes of the above referenced provisions of the Alcoholic Beverage Code, sweepstakes shall include prizes that are awarded to consumers on the basis of random chance or on the basis of some knowledge or skill demonstrated by the sweepstakes participant, as determined by a judge or judges selected by the sponsor for that purpose.

(c) The holder of the following licenses and permits may offer a prize to a consumer if the offer is part of a nationally conducted promotional sweepstakes activity legally offered and simultaneously conducted during the same time period in 30 or more states:

(1) manufacturer's license;

(2) non-resident manufacturer's license;

(3) brewer's permit;

(4) non-resident brewer's permit;

(5) distiller's and rectifier's permit;

(6) winery permit;

(7) wine bottler's permit; or

(8) non-resident seller's permit.

(d) Any sweepstakes promotion must be legally offered and simultaneously conducted during the same time period in 30 or more states.

(e) A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

(f) A person must be 21 years of age or older to enter a sweepstakes promotion.

(g) No game piece, or other form of instant win device may be packaged with, within, or printed on any packages of alcoholic beverages. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverage.

(h) No sweepstakes entry may be packaged with, within, or printed on any packages of alcoholic beverages unless there is provided at the point of sale identical entries available to the consumer. All sweepstakes entries are prohibited from requiring a purchase of an alcoholic beverage or the validation of any kind which requires a purchase of any alcoholic beverages.

(i) Except as specifically authorized by this section, and the Alcoholic Beverage Code, §102.07 and §108.061, it shall be unlawful for any person to sell or distribute any alcoholic beverage in a container bearing any label, crown, or covering upon which there is printed or marked any word, letter, figure, symbol or character representative of or suggesting any game of chance, or to use or display any advertising so printed or marked.

(j) Any sweepstakes promotion that includes prizes that are to be awarded on the basis of some knowledge or skill demonstrated by the sweepstakes participant may not be held or conducted on the licensed premises of a retailer or private club. Sweepstakes sponsors may, with the retailer's permission, place sweepstakes entry forms on retail premises.

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 August 1, 2000.

TRD-200005357
Doyne Bailey
Administrator
Texas Alcoholic Beverage Commission
Effective date: August 21, 2000
Proposal publication date: May 12, 2000
For further information, please call: (512) 206-3204

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TITLE 22. EXAMINING BOARDS

PART 12. BOARD OF VOCATIONAL NURSE EXAMINERS

CHAPTER 239. CONTESTED CASE PROCEDURE

SUBCHAPTER A. DEFINITIONS

22 TAC §239.1

The Board of Vocational Nurse Examiners adopts the amendment of §239.1 relating to definitions without changes to the proposed text published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6276). The definition for Notice is amended for consistency with other rules in this Chapter that have been amended.

No comments were received relative to the adoption of this rule.

The amendment is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005326
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Effective date: August 20, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 305-8100

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SUBCHAPTER D. INFORMAL DISPOSITIONS

22 TAC §239.41, §239.42

The Board of Vocational Nurse Examiners adopts the repeal of §239.41 relative to Prehearing Conference and §239.42 relative to Agreed Orders without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6277). Section 239.41 was repealed in order to make substantial changes in the wording and to change "Prehearing Conference" to "Informal Conference". Section 239.42 was repealed for renumbering purposes only.

No comments were received relative to the repeal of these rules.

The repeal is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005328
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Effective date: August 20, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 305-8100

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22 TAC §§239.41 - 239.51

The Board of Vocational Nurse Examiners adopts new §239.41, 239.42, 239.43, 239.44, 239.45, 239.46, 239.47, 239.48, 239.49, 239.50, 239.51 without changes to the proposed text published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6278). The rules are adopted for clarification and consistency relative to default orders.

No comments were received relative to the adoption of these rules.

The rules are adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the

Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005329
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Effective date: August 20, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 305-8100

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SUBCHAPTER E. REINSTATEMENT PROCESS

22 TAC §§239.51 - 239.54

The Board of Vocational Nurse Examiners adopts the repeal of §239.51 relative to Application for Reinstatement of License, §239.52 relative to Evaluation for Reinstatement, §239.53 relative to Procedure Upon Request for Reinstatement and §239.54 relative to Board Action Possible Upon Reinstatement without changes to the proposal as published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6279). These rules are repealed for renumbering purposes only.

No comments were received relative to the adoption of this repeal.

The repeal of these rules is adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005330
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Effective date: August 20, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 305-8100

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22 TAC §§239.61 - 239.64

The Board of Vocational Nurse Examiners adopts new §239.61 relative to Application for Reinstatement of License, §239.62 relative to Evaluation for Reinstatement, §239.63 relative to Procedure Upon Request for Reinstatement and §239.64 relative to Board Action Possible Upon Reinstatement without changes to the proposed text published in the June 30, 2000, issue of the *Texas Register* (25 TexReg). These rules are adopted to replace those repealed for renumbering purposes only. The only changes to language is to replace references to prehearings with informal conferences.

No comments were received relative to the adoption of these rules.

These rules are adopted under Chapter 302, Texas Occupations Code, Subchapter D, Section 302.151 (b), which provides the Board of Vocational Nurse Examiners with the authority to make such rules and regulations as may be necessary to carry in effect the purposes of the law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005331
Mary M. Strange, RN, BSN, CNA
Executive Director
Board of Vocational Nurse Examiners
Effective date: August 20, 2000
Proposal publication date: June 30, 2000
For further information, please call: (512) 305-8100

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.8

The Texas Board of Physical Therapy Examiners adopts amendments to §341.8, Inactive status, without changes to the proposed text as published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4687), and will not be republished. These amendments clarify instructions for licensees about the inactive status, and streamline agency administrative processes.

These amendments establish that the board charges a fee to go inactive, rather than to return to active status, clarify that a late fee will be charged if the change in status is not completed prior to the license expiration date; clarify that a passing score on the jurisprudence exam is a requirement to return to active status; and correct a misstatement about continuing education requirements.

No comments were received regarding these amendments.

The rule is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 31, 2000.

TRD-200005345

John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: August 20, 2000
Proposal publication date: May 26, 2000
For further information, please call: (512) 305-6900

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER S. CATASTROPHE RESERVE TRUST FUND

28 TAC §§5.9901 - 5.9906

The Commissioner of Insurance adopts new §§5.9901- 5.9906 concerning the Catastrophe Reserve Trust Fund. These sections are adopted without changes to the proposed text as published in the June 9, 2000, issue of the *Texas Register* (25 TexReg 5554) and will not be republished.

The new sections are necessary to implement House Bill 2253 as passed by the 76th Texas Legislature, which amended Article 21.49 of the Texas Insurance Code, concerning the Catastrophe Reserve Trust Fund (trust fund). The trust fund is part of the statutory plan to address catastrophic losses in the event of a major storm affecting the Texas coast. HB 2253 directed the Commissioner of Insurance to adopt rules to establish the procedures relating to relinquishments of net equity of the members of the Texas Windstorm Insurance Association to the trust fund and the disbursement of money from the trust fund in the event of an occurrence or series of occurrences within a defined catastrophe area. As required by this legislation, these new sections set forth the procedures for payments to, disbursements from, and the maintenance of the trust fund.

The new sections set forth the procedures relating to payments of relinquished amounts to the trust fund and the disbursement of money from the trust fund in the event of a defined catastrophe that requires disbursement from the trust fund. Section 5.9901 sets forth the purpose and scope of the subchapter. Section 5.9902 defines the various words and terms used in the subchapter. Section 5.9903 provides for the operation of the trust fund. This section provides that the Comptroller shall administer the trust fund in accordance with Article 21.49, Texas Insurance Code and Subchapter S. The Texas Treasury Safekeeping Trust Company, a special purpose trust company managed by the Comptroller, shall receive, disburse, invest, hold and manage all monies deposited in the trust fund. This section further requires the association to relinquish net equity of its association members to the trust fund, and sets forth procedures for disbursements from the trust fund upon direction of the Commissioner and provides for maintenance of the trust fund by the Comptroller. Section 5.9904 relates to termination of the trust fund. The trust fund may be terminated only by law and on termination, all assets of the trust fund revert to the state. Section 5.9905 relates to the investments of monies in the trust fund. Section 5.9906 sets out the duties and responsibilities of the association and the Commissioner in the event a loss triggers a disbursement from the fund.

No comments were received regarding the adoption of the new sections.

The new sections are adopted under the Insurance Code Article 21.49 and §36.001. Article 21.49, Section 8(i)(1), provides that the Commissioner of Insurance shall adopt rules that address the process for payments to and disbursements from the trust fund. Section 36.001 provides that the Commissioner of Insurance may adopt rules to execute the duties and functions of the Texas Department of Insurance.

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 August 1, 2000.

TRD-200005366
Lynda Nesenholtz
General Counsel and Chief Clerk
Texas Department of Insurance
Effective date: August 21, 2000
Proposal publication date: June 9, 2000
For further information, please call: (512) 463-6327

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 13. LAND RESOURCES

SUBCHAPTER B. RIGHTS-OF-WAY OVER PUBLIC LANDS

31 TAC §13.17

The General Land Office adopts an amendment to §13.17(c) relating to the payment of fees for renewals of right-of-way easements for pipelines, with changes to the proposed text as published in the March 31, 2000, issue of the *Texas Register* (25 TexReg 2766). The amendment requires that the fee to be paid for renewals of right-of-way easements for pipelines be the full rate presented in §13.17(a) of the rule. The amendment to the rule is being adopted to increase deposits to the permanent school fund and to the special fund for removal of unauthorized structures on permanent school fund land as a result of increased payment of the fees for renewals of right-of-way easements by the users of the pipelines.

Written comments on the proposal were received from Texas Association of Business & Chamber of Commerce, Association of Texas Intrastate Natural Gas Pipelines, and Texas Oil & Gas Association. The comments addressed the same two concerns: 1) deletion of the word "automatically" from the rule subjects a pipeline user to a review of its pipeline use before a renewal of the easement will be granted by the agency, thereby creating uncertainty in planning for continuity of operations and acquisitions and dispositions, and 2) the requirement that the renewal be based on the then current rate applicable to pipelines imposes an additional economic burden on the pipeline user. With regard to

the first concern, suggestions included: (i) retention of the word "automatically," and (ii) inclusion of language that clarifies the conditions upon which easement renewals will be given. With regard to the second concern, suggestions included: (i) no increase in rates, (ii) limiting any increase to 100% of the originally paid fee, and (iii) phasing any increase over a number of years.

In response to the first concern, the agency changed the language in the proposed amendment to §13.17(c) to provide that renewals "shall" be granted, provided that the grantee complies with the terms and conditions of the easement "agreement, including the notice, application, renewal payment, and documentation requirements contained therein." The word "automatically" remains deleted to avoid misunderstandings as to whether the grantee desires to renew the easement at the time for renewal. The notice procedure in the easement agreement will provide the agency with information on the grantee's intention to renew and should substantially reduce the agency's time and effort in policing the status of renewals on existing pipeline easements, while placing but a small burden on the user to notify the agency of its intent to renew the easement.

As to concern No. 2, the agency responds that the renewal rate, under the adopted rule, will be the same as that being paid by new pipeline users and users extending pipelines over additional areas, thereby putting first time users, extending users, and renewal users on the same rate level. Additionally, all users pay only a one-time fee over a ten-year term, with no periodic present value adjustments or other related increases; thereby affording the user extended budgetary planning time. Also, currently outstanding easement agreements, which contain a 50% renewal rate clause, will be honored by the agency, provided the user has complied with all of the terms of the easement at the time of renewal. Finally, because there have been no increases in pipeline user fees since 1984, deletion of the 50% renewal rate, at this time, should not result in an undue imposition on pipeline users.

The amendment is adopted under the Natural Resources Code, Chapter 31, §31.051, which provides the Land Commissioner with the authority to make and enforce suitable rules consistent with the law. The amendment is also adopted under Chapter 51, §51.295 and §51.296, relating to Easements.

The amendment affects Natural Resources Code, Chapter 51, §51.295 and §51.296.

§13.17. Fees for Right-of-Way Easements.

(a) The following table lists the fees and terms for pipeline right-of-way easements across public lands as established by the commissioner of the General Land Office.
Figure: 31 TAC §13.17(a) (No change.)

(b) Right-of-way easements for pipelines issued prior to December 31, 1983, shall be renewed upon the expiration of their current term at the full rate presented in subsection (a) of this section. These renewals shall be considered as easements for new pipelines for purposes of subsection (c) of this section

(c) Right-of-way easements issued for new pipelines after December 31, 1983, shall be renewed for an additional 10-year term at the full rate applicable to pipelines at the time of renewal, provided grantee has complied with all the terms and conditions of the easement agreement, including the notice, application, renewal fee payment, and documentation requirements contained therein.

(d) At the commissioner's discretion, a right-of-way easement for pipelines may be renewed for a term less than 10 years and the rates prorated accordingly.

(e) The following table lists the fees and terms for power and telephone line rights-of-way over public lands as established by the commissioner.
Figure: 31 TAC §13.17(e) (No change.)

(f) Renewal fees for all power and telephone line rights-of-way over public lands are the rates in effect at the time of renewal.

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 August 2, 2000.

TRD-200005395
Larry Soward
Chief Clerk
General Land Office
Effective date: August 22, 2000
Proposal publication date: March 31, 2000
For further information, please call: (512) 305-9129

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PART 16. COASTAL COORDINATION COUNCIL

CHAPTER 501. COASTAL MANAGEMENT PROGRAM

The Coastal Coordination Council (Council) adopts, without changes to the text, the proposed amendments to §501.3, relating to Definitions and Abbreviations, §501.4, relating to General Procedures, and adopts with nonsubstantive, editorial changes to the text §501.14, relating to Policies for Specific Activities and Coastal Natural Resource Areas. The proposed amendments were published in the May 19, 2000, edition of the *Texas Register* (25 TexReg 4486). The Council voted to adopt these amendments at its regularly scheduled meeting on June 28, 2000.

These rules are adopted concurrently with the amendments to Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies, and Chapter 506, relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies. Together, the adopted amendments to Chapters 501, 505 and 506 are part of a single rulemaking action.

The adopted amendment to §501.3(b)(15), relating to the definition of "waters of the open Gulf of Mexico," clarifies that this coastal natural resource area includes the fishery habitat and fishery resources within the area.

The adopted amendment to §501.4(b), relating to General Procedures, has deleted the requirement that the Council meet in specific months. The Coastal Coordination Act (the Act) requires only that the Council meet once in each calendar quarter. Texas Natural Resources Code, §33.204(b). This adopted amendment revises the Coastal Management Program (CMP) rules to conform to the Act.

The adopted amendments to §501.4(e), relating to General Procedures, change the deadline for the submission of agenda

items by Council members to 21 days prior to a meeting from the previous 14 days prior, allow the Council Secretary to notify the Council Members of the agenda via electronic mail, and clarify that the time periods under this subsection are measured in calendar days.

Adopted §501.4(h), relating to General Procedures, has added a new subsection containing general rules for the CMP Grants Program. This adopted amendment codifies the Council's existing policies and practices regarding the CMP Grants Program. Each year, the Council receives grant funds from the National Oceanic and Atmospheric Administration for the implementation of the CMP. The Council passes through the majority of these funds to coastal local governments and other qualified entities for the planning and implementation of projects that enhance public access to and appreciation of coastal natural resource areas, further the acquisition and/or conservation of unique coastal ecosystems, and otherwise further the CMP goals and policies. For each year or for each grant cycle, the Council promulgates guidance for the CMP Grants Program describing the deadlines, schedule, eligibility requirements, funding policies, and approval process.

The adopted amendment to §501.14(f)(1)(D), relating to policies for the discharge of municipal and industrial wastewaters to coastal waters, expands the Council's existing policy for the establishment of Total Maximum Daily Pollutant Loads (TMDLs) to require the use of scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders.

The adopted amendment to §501.14(t), relating to policies for marine fishery management, establishes a new policy for the promulgation of fishery management measures by the National Marine Fisheries Service (NMFS). Texas fishers raised concerns regarding the effectiveness of management measures for the Red Snapper Fishery, recently proposed by NMFS, and the impact of these management measures on Texas fishers. Council staff presented a report on federal fisheries policies at the Council's December 2, 1999, meeting in Galveston. The Council then formed a work group to consider and prepare proposed changes to the CMP rules, including draft policies for fishery management measures. In developing these policies, the work group worked closely with the Texas Parks and Wildlife Department (TPWD) and reviewed federal fishery policies as well as fishery policies from Texas, Florida, and other states. The new policies for fishery management measures require that fishery management measures conserve fishery resources, be based on the best information available, and be fair and equitable to all of the people of the state.

Concurrent with this rulemaking, the Council has adopted a general consistency concurrence to affirm the TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. The general consistency concurrence will find that where NMFS promulgates, as a federal rule, fishery management measures that incorporate and adopt the TPWD's state fishery management policies, the Council deems the federal fishery management measures to be consistent with the CMP goals and policies. A copy of the general consistency concurrence may be obtained by writing to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile (512) 475-0680.

A public hearing on the proposed amendments was held on May 18, 2000, in Austin as part of the regularly scheduled meeting of the Council's Executive Committee. At the hearing, comments in support of the proposed amendments providing for the review of the federal fishery management measures were provided by the Texas Recreational Fishing Alliance and The Coastal Conservation Association. No other comments were received regarding the proposed amendments to Chapter 501.

An editorial change has been made to §501.14(d), relating to policies for construction and operation of solid waste treatment, storage, and disposal facilities, to apply consistent terms. Under subparagraphs (B) and (C) of §501.14(d), the terms "100-year flood" and "100-year flood event" were used interchangeably. These subparagraphs have been revised to consistently use the term "100-year flood event." This is a change to the rule made for clarification and consistency.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted amendments as a "major environmental rule." Under the Government Code, a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The adopted amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, nor are the amendments adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these adopted amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile (512) 463-6311.

SUBCHAPTER A. GENERAL PROVISIONS

31 TAC §501.3, §501.4

These amendments are adopted under Texas Natural Resources Code §33.053(a)(2) and (4)-(7), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), and describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to

provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(2) and (4)-(7), 33.055, 33.202, and 33.204 are affected by these adopted amendments.

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 August 7, 2000.

TRD-200005440
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: August 27, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 305-9129

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SUBCHAPTER B. GOALS AND POLICIES

31 TAC §501.14

This amendment is adopted under Texas Natural Resources Code §§33.053(a)(2) and (4)-(7), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), and describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(2) and (4)-(7), 33.055, 33.202, and 33.204 are affected by this adopted amendment.

§501.14. Policies for Specific Activities and Coastal Natural Resource Areas.

(a) Construction of Electric Generating and Transmission Facilities.

(1) Construction of electric generating facilities and electric transmission lines in the coastal zone shall comply with the policies in this subsection.

(A) New electric generating facilities shall, where practicable, be located at previously developed sites. New electric generating facilities at undeveloped sites shall be located so that future expansion will avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable. To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(B) Electric generating facilities using once-through cooling systems shall be located and designed to have the least adverse effects practicable, including impingement or entrainment of estuarine organisms.

(C) Electric generating facilities shall be constructed at sites selected to have the least adverse effects practicable on recreational uses of CNRAs and on areas used for spawning, nesting, and seasonal migrations of terrestrial and aquatic fish and wildlife species.

(D) Electric transmission lines to or on Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503, on coastal barriers shall:

(i) be located, where practicable, in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects; and

(ii) be located at sites at which future expansion shall avoid construction in critical areas, Gulf beaches, critical dunes, and washovers to the greatest extent practicable.

(2) The PUC shall comply with the policies in this subsection when issuing certificates of convenience and necessity and adopting rules under Texas Civil Statutes, Public Utility Regulatory Act, Article 1446c, governing construction of electric generating facilities, electric transmission lines, and associated facilities in the coastal zone.

(b) Construction, Operation, and Maintenance of Oil and Gas Exploration and Production Facilities.

(1) Oil and gas exploration and production on submerged lands shall comply with the policies in this subsection.

(A) In or near critical areas, facilities shall be located and operated and geophysical and other operations shall be located and conducted in such a manner as to avoid and otherwise minimize adverse effects, including those from the disposal of solid waste and disturbance resulting from the operation of vessels and wheeled or tracked vehicles, whether on areas under lease, easement, or permit or on or across access routes thereto. Where practicable, buffer zones for critical areas shall be established and directional drilling or other methods to avoid disturbance, such as pooling or unitization, shall be employed.

(B) Lessees, easement holders, and permittees shall construct facilities in a manner that avoids impoundment or draining of coastal wetlands, if practicable, and shall mitigate any adverse effects on coastal wetlands impounded or drained in accordance with the sequencing requirements in this subsection.

(C) Upon completion or cessation of operations, lessees, easement holders, and permittees shall remove facilities and restore any significantly degraded areas to pre-project conditions as closely as practicable, unless facilities can be used for maintenance or enhancement of CNRAs or unless restoration activities would further degrade CNRAs.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, governing oil and gas exploration and production on submerged lands.

(c) Discharges of Wastewater and Disposal of Waste from Oil and Gas Exploration and Production Activities.

(1) Disposal of oil and gas waste in the coastal zone shall comply with the policies in this subsection.

(A) No new commercial oil and gas waste disposal pit shall be located in any CNRA.

(B) Oil and gas waste disposal pits shall be designed to prevent releases of pollutants that adversely affect coastal waters or critical areas.

(2) Discharge of oil and gas exploration and production wastewater in the coastal zone shall comply with the following policies.

(A) All discharges shall comply with all provisions of surface water quality standards established by the TNRCC under subsection (f) of this section.

(B) To the greatest extent practicable, new wastewater outfalls shall be located where the discharge will not adversely affect critical areas. Existing wastewater outfalls that adversely affect critical areas shall be either discontinued or relocated so as not to adversely affect critical areas within two years of the effective date of this section.

(C) The RRC shall notify the TNRCC and the TPWD upon receipt of an application for a new permit to discharge produced waters to waters under tidal influence. In determining compliance with the policies in this subsection, the RRC shall consider the effects of salinity from the discharge.

(3) The RRC shall comply with the policies in this subsection when issuing permits and adopting rules under the Texas Natural Resources Code, Chapter 91, for oil and gas waste, and under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, for oil and gas wastewater discharges.

(d) Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities.

(1) Construction and operation of solid waste facilities in the coastal zone shall comply with the policies in this subsection. This subsection applies to both new facilities and areal expansion of existing facilities.

(A) A landfill at which hazardous waste is received for a fee shall not be located in a critical area, critical dune area, critical erosion area, or a 100-year floodplain of a perennial stream, delineated on a flood map adopted by the Federal Emergency Management Agency after September 1, 1985, as zone A1-99, VO, or V1-30. This provision shall not apply to any facility for which a notice of intent to file an application, or an application, has been filed with the TNRCC as of September 1, 1985.

(B) Except as provided in clauses (i) and (ii) of this subparagraph, a hazardous waste landfill shall not be located in a special hazard area existing before site development except in an area with a flood depth of less than three feet. Any hazardous waste landfill within a special hazard area must be designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood event.

(i) The areal expansion of a landfill in a special hazard area may be allowed if the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(ii) A new commercial hazardous waste management facility landfill unit may not be located in a special hazard area, unless the applicant demonstrates that the facility design will prevent the physical transport of any hazardous waste by a 100-year flood event.

(C) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, and storage surface impoundments shall not be located in special hazard areas unless they are designed, constructed, operated, and maintained to prevent washout of any hazardous waste by a 100-year flood event.

(D) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located within 1,000 feet of an area subject to active coastal shoreline erosion, if the area is protected by a barrier island or peninsula, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water. On coastal shorelines which are subject to active shoreline erosion and which are unprotected by a barrier island or peninsula, a separation distance from the shoreline to the facility must be at least 5,000 feet, unless the design, construction, and operational features of the facility will prevent adverse effects resulting from storm surge and erosion or scouring by water.

(E) Hazardous waste storage or processing facilities, land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located in coastal wetlands, or in any CNRA that is the critical habitat of an endangered species of plant or animal unless the design, construction, and operation features of the facility will prevent adverse effects on the critical habitat of the endangered species.

(F) Hazardous waste land treatment facilities, waste piles, storage surface impoundments, and landfills shall not be located on coastal barriers.

(G) Hazardous waste landfills are prohibited if there is a practicable alternative to such a landfill that is reasonably available to manage the types and classes of hazardous waste which might be disposed at the landfill.

(H) The TNRCC shall not issue a permit for a new hazardous waste management facility or the areal expansion of an existing hazardous waste facility unless it finds that the proposed site, when evaluated in light of proposed design, construction, and operational features, reasonably minimizes possible contamination of coastal waters.

(I) New solid waste facilities and areal expansion of existing solid waste facilities shall be sited, designed, constructed, and operated to prevent releases of pollutants that may adversely affect CNRAs and, at a minimum, comply with standards established under the Solid Waste Disposal Act, 42 United States Code Annotated, §§6901 et seq.

(2) The TNRCC shall comply with the policies in this subsection when issuing permits and adopting rules under Texas Health and Safety Code, Chapter 361.

(e) Prevention, Response and Remediation of Oil Spills.

(1) The GLO regulations governing prevention of, response to and remediation of coastal oil spills shall provide for measures to prevent coastal oil spills and to ensure adequate response and removal actions. The GLO regulations for certification of vessels and facilities that handle oil shall be designed to ensure that vessels and facilities are capable of prompt response and adequate removal of unauthorized discharges of oil. The GLO regulations adopted pursuant to the Oil Spill Prevention and Response Act (OSPRA), Texas Natural Resources Code, Chapter 40, shall be consistent with the State Coastal Discharge Contingency Plan adopted pursuant to OSPRA; and the National Contingency Plan adopted pursuant to the Federal Water Pollution Control Act, 33 United States Code Annotated, Chapter 26.

(2) Natural Resource Damage Assessment. GLO rules under OSPRA governing the assessment of damages to natural resources injured as the result of an unauthorized discharge of oil into coastal waters shall provide for reasonable and rational procedures for assessing damages and shall take into account the unique circumstances of the spill incident. The costs of assessing the damages shall not be disproportionate to the value of the injured resources. Plans for the restoration, rehabilitation, replacement or acquisition of equivalent resources shall provide for participation by the public and shall be designed to promote the restoration of the injured resources with all deliberate speed. The GLO rules shall be consistent with other state rules and policies and with the CMP goals and policies.

(f) Discharge of Municipal and Industrial Wastewater to Coastal Waters.

(1) TNRCC rules shall:

(A) comply with the requirements of the Clean Water Act, 33 United States Code Annotated, §§1251 et seq, and implementing regulations at Code of Federal Regulations, Title 40, which include establishing surface water quality standards in order to protect designated uses of coastal waters, including the protection of uses for water supply, recreational purposes, and propagation and protection of terrestrial and aquatic life, and establishing water-quality-based effluent limits, including toxicity monitoring and specific toxicity or chemical limits as necessary to protect designated uses of coastal waters;

(B) provide for the assessment of water quality on a coastal watershed basis once every two years, as required by the Texas Water Code, §26.0135(d);

(C) to the greatest extent practicable, provide that all permits for the discharge of wastewater within a given watershed or region of a single watershed contain the same expiration date in order to evaluate the combined effects of permitted discharges on water quality within that watershed or region;

(D) identify and rank waters that are not attaining designated uses and establish total maximum daily pollutant loads in accordance with those rankings using scientifically valid models calibrated and validated with monitored data and with public input from affected stakeholders; and

(E) require that increases in pollutant loads to coastal waters shall not:

(i) impair designated uses of coastal waters; or

(ii) result in degradation of coastal waters that exceed fishable/swimmable quality except in cases where lowering coastal water quality is necessary for important economic or social development.

(2) Discharge of municipal and industrial wastewater in the coastal zone shall comply with the following policies.

(A) Discharges shall comply with water-quality-based effluent limits.

(B) Discharges that increase pollutant loadings to coastal waters shall not impair designated uses of coastal waters and shall not significantly degrade coastal water quality unless necessary for important economic or social development.

(C) To the greatest extent practicable, new wastewater outfalls shall be located where they will not adversely affect critical areas.

(3) The TNRCC shall comply with the policies in this subsection when adopting rules and authorizing wastewater discharges under Texas Water Code, Chapter 26.

(4) The TNRCC shall consult with the Texas Department of Health when reviewing permit applications for wastewater discharges that may significantly adversely affect oyster reefs.

(g) Nonpoint Source (NPS) Water Pollution.

(1) State agencies and subdivisions with authority to manage NPS pollution shall cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters.

(2) In an area that the TSSWCB identifies as having or having the potential to develop agricultural or silvicultural NPS water quality problems or an area within the coastal zone, the TSSWCB shall establish a water quality management plan certification program that provides, through the local soil and water conservation district, for the development, supervision, and monitoring of voluntary individual water quality management plans for agricultural and silvicultural lands. Each plan must be developed, maintained, and implemented under rules and criteria adopted by the TSSWCB and discharges under such a plan may not cause a violation of state water quality standards established by the TNRCC. The TSSWCB's rules shall certify a plan that satisfies the TSSWCB rules and criteria and discharges which do not cause a violation of state water quality standards established by the TNRCC. This policy is not intended, nor shall it be interpreted, to require the TSSWCB to establish non-voluntary requirements for the development, maintenance, or implementation of individual water quality management plans.

(3) TNRCC rules under Texas Health and Safety Code, Chapter 366, governing on-site sewage disposal systems, and TNRCC rules under Texas Water Code, Chapter 26, Subchapter I, governing underground storage tanks, shall require that on-site disposal systems and underground storage tanks be located, designed, operated, inspected, and maintained so as to prevent releases of pollutants that may adversely affect coastal waters.

(4) This policy shall not be interpreted or applied so as to require that either a National Pollution Discharge Elimination System (NPDES) permit for stormwater discharges issued under the Clean Water Act, §402(p), or an NPDES permit for a concentrated animal feeding operation, requiring no discharge up to and including a 25-year, 24-hour frequency storm, provide additional NPS pollution control measures in addition to those required in the permit.

(h) Development in Critical Areas.

(1) Dredging and construction of structures in, or the discharge of dredged or fill material into, critical areas shall comply with the policies in this subsection. In implementing this subsection, cumulative and secondary adverse effects of these activities will be considered.

(A) The policies in this subsection shall be applied in a manner consistent with the goal of achieving no net loss of critical area functions and values.

(B) Persons proposing development in critical areas shall demonstrate that no practicable alternative with fewer adverse effects is available.

(C) In evaluating practicable alternatives, the following sequence shall be applied:

(i) Adverse effects on critical areas shall be avoided to the greatest extent practicable.

(ii) Unavoidable adverse effects shall be minimized to the greatest extent practicable by limiting the degree or magnitude of the activity and its implementation.

(iii) Appropriate and practicable compensatory mitigation shall be required to the greatest extent practicable for all adverse effects that cannot be avoided or minimized.

(D) Compensatory mitigation includes restoring adversely affected critical areas or replacing adversely affected critical areas by creating new critical areas. Compensatory mitigation should be undertaken, when practicable, in areas adjacent or contiguous to the affected critical areas (on-site). If on-site compensatory mitigation is not practicable, compensatory mitigation should be undertaken in close physical proximity to the affected critical areas if practicable and in the same watershed if possible (off-site). Compensatory mitigation should also attempt to replace affected critical areas with critical areas with characteristics identical to or closely approximating those of the affected critical areas (in-kind). The preferred order of compensatory mitigation is:

(i) on-site, in-kind;

(ii) off-site, in-kind;

(iii) on-site, out-of-kind; and

(iv) off-site, out-of-kind.

(E) Mitigation banking is acceptable compensatory mitigation if use of the mitigation bank has been approved by the agency authorizing the development and mitigation credits are available for withdrawal. Preservation through acquisition for public ownership of unique critical areas or other ecologically important areas may be acceptable compensatory mitigation in exceptional circumstances. Examples of this include areas of high priority for preservation or restoration, areas whose functions and values are difficult to replicate, or areas not adequately protected by regulatory programs. Acquisition will normally be allowed only in conjunction with preferred forms of compensatory mitigation.

(F) In determining compensatory mitigation requirements, the impaired functions and values of the affected critical area shall be replaced on a one-to-one ratio. Replacement of functions and values on a one-to-one ratio may require restoration or replacement of the physical area affected on a ratio higher than one-to-one. While no net loss of critical area functions and values is the goal, it is not required in individual cases where mitigation is not practicable or would result in only inconsequential environmental benefits. It is also important to recognize that there are circumstances where the adverse effects of the activity are so significant that, even if alternatives are not available, the activity may not be permitted regardless of the compensatory mitigation proposed.

(G) Development in critical areas shall not be authorized if significant degradation of critical areas will occur. Significant degradation occurs if:

(i) the activity will jeopardize the continued existence of species listed as endangered or threatened, or will result in likelihood of the destruction or adverse modification of a habitat determined to be a critical habitat under the Endangered Species Act, 16 United States Code Annotated, §§1531-1544;

(ii) the activity will cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section;

(iii) the activity violates any applicable toxic effluent standard or prohibition established under subsection (f) of this section;

(iv) the activity violates any requirement imposed to protect a marine sanctuary designated under the Marine Protection, Research, and Sanctuaries Act of 1972, 33 United States Code Annotated, Chapter 27; or

(v) taking into account the nature and degree of all identifiable adverse effects, including their persistence, permanence, areal extent, and the degree to which these effects will have been mitigated pursuant to subparagraphs (C) and (D) of this paragraph, the activity will, individually or collectively, cause or contribute to significant adverse effects on:

(I) human health and welfare, including effects on water supplies, plankton, benthos, fish, shellfish, wildlife, and consumption of fish and wildlife;

(II) the life stages of aquatic life and other wildlife dependent on aquatic ecosystems, including the transfer, concentration, or spread of pollutants or their byproducts beyond the site, or their introduction into an ecosystem, through biological, physical, or chemical processes;

(III) ecosystem diversity, productivity, and stability, including loss of fish and wildlife habitat or loss of the capacity of a coastal wetland to assimilate nutrients, purify water, or reduce wave energy; or

(IV) generally accepted recreational, aesthetic or economic values of the critical area which are of exceptional character and importance.

(2) The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing development affecting critical areas; provided that activities exempted from the requirement for a permit for the discharge of dredged or fill material, described in Code of Federal Regulations, Title 33, §323.4 and/or Code of Federal Regulations, Title 40, §232.3, including but not limited to normal farming, silviculture, and ranching activities, such as plowing, seeding, cultivating, minor drainage, and harvesting for the production of food, fiber, and forest products, or upland soil and water conservation practices, shall not be considered activities for which a certification is required. The GLO and the SLB shall comply with the policies in this subsection when approving oil, gas, or other mineral lease plans of operation or granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61, governing development affecting critical areas on state submerged lands and private submerged lands, and when issuing approvals and adopting rules under Texas Civil Statutes, Article 5421u, for mitigation banks operated by subdivisions of the state.

(3) Agencies required to comply with this subsection will coordinate with one another and with federal agencies when evaluating alternatives, determining appropriate and practicable mitigation, and assessing significant degradation. Those agencies' rules governing authorizations for development in critical areas shall require a demonstration that the requirements of paragraph (1)(A)-(G) of this subsection have been satisfied.

(4) For any dredging or construction of structures in, or discharge of dredged or fill material into, critical areas that is subject to the

requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on the cumulative and secondary adverse affects of the project need not be produced or evaluated to comply with this subsection if such data and information is produced and evaluated in compliance with §501.15(b)-(c) of this title (relating to Policy for Major Actions).

(i) Construction of Waterfront Facilities and Other Structures on Submerged Lands.

(1) Development on submerged lands shall comply with the policies in this subsection.

(A) Marinas shall be designed and, to the greatest extent practicable, sited so that tides and currents will aid in flushing of the site or renew its water regularly.

(B) Marinas designed for anchorage of private vessels shall provide facilities for the collection of waste, refuse, trash, and debris.

(C) Marinas with the capacity for long-term anchorage of more than ten vessels shall provide pump-out facilities for marine toilets, or other such measures or facilities that provide an equal or better level of water quality protection.

(D) Marinas, docks, piers, wharves and other structures shall be designed and, to the greatest extent practicable, sited to avoid and otherwise minimize adverse effects on critical areas from boat traffic to and from those structures.

(E) Construction of docks, piers, wharves, and other structures shall be preferred instead of authorizing dredging of channels or basins or filling of submerged lands to provide access to coastal waters if such construction is practicable, environmentally preferable, and will not interfere with commercial navigation.

(F) Piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs (including artificial reefs for compensatory mitigation) shall be limited to the minimum necessary to serve the project purpose and shall be constructed in a manner that:

(i) does not significantly interfere with public navigation;

(ii) does not significantly interfere with the natural coastal processes which supply sediments to shore areas or otherwise exacerbate erosion of shore areas; and

(iii) avoids and otherwise minimizes shading of critical areas and other adverse effects.

(G) Facilities shall be located at sites or designed and constructed to the greatest extent practicable to avoid and otherwise minimize the potential for adverse effects from:

(i) construction and maintenance of other development associated with the facility;

(ii) direct release to coastal waters and critical areas of pollutants from oil or hazardous substance spills or stormwater runoff; and

(iii) deposition of airborne pollutants in coastal waters and critical areas.

(H) Where practicable, pipelines, transmission lines, cables, roads, causeways, and bridges shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects and if it does not result in unreasonable risks to human health, safety, and welfare.

(I) To the greatest extent practicable, construction of facilities shall occur at sites and times selected to have the least adverse effects on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial and aquatic wildlife.

(J) Facilities shall be located at sites which avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (h) of this section. To the greatest extent practicable, facilities shall be located at sites at which expansion will not result in development in critical areas.

(K) Where practicable, piers, docks, wharves, bulkheads, jetties, groins, fishing cabins, and artificial reefs shall be constructed with materials that will not cause any adverse effects on coastal waters or critical areas.

(L) Developed sites shall be returned as closely as practicable to pre-project conditions upon completion or cessation of operations by the removal of facilities and restoration of any significantly degraded areas, unless:

(i) the facilities can be used for public purposes or contribute to the maintenance or enhancement of coastal water quality, critical areas, beaches, submerged lands, or shore areas; or

(ii) restoration activities would further degrade CNRAs.

(M) Water-dependent uses and facilities shall receive preference over those uses and facilities that are not water-dependent.

(N) Nonstructural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms, and planting of vegetation shall be preferred instead of structural erosion response methods.

(O) Major residential and recreational waterfront facilities shall to the greatest extent practicable accommodate public access to coastal waters and preserve the public's ability to enjoy the natural aesthetic values of coastal submerged lands.

(P) Activities on submerged land shall avoid and otherwise minimize any significant interference with the public's use of and access to such lands.

(Q) Erosion of Gulf beaches and coastal shore areas caused by construction or modification of jetties, breakwaters, groins, or shore stabilization projects shall be mitigated to the extent the costs of mitigation are reasonably proportionate to the benefits of mitigation. Factors that shall be considered in determining whether the costs of mitigation are reasonably proportionate to the cost of the construction or modification and benefits include, but are not limited to, environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits.

(2) To the extent applicable to the public beach, the policies in this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public.

(3) The GLO and the SLB, in governing development on state submerged lands, shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33 and 51-53, and Texas Water Code, Chapter 61.

(j) Dredging and Dredged Material Disposal and Placement.

(1) Dredging and the disposal and placement of dredged material shall avoid and otherwise minimize adverse effects to coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches to the greatest extent practicable. The policies of this subsection are supplemental to any further restrictions or requirements relating to the beach access and use rights of the public. In implementing this subsection, cumulative and secondary adverse effects of dredging and the disposal and placement of dredged material and the unique characteristics of affected sites shall be considered.

(A) Dredging and dredged material disposal and placement shall not cause or contribute, after consideration of dilution and dispersion, to violation of any applicable surface water quality standards established under subsection (f) of this section.

(B) Except as otherwise provided in subparagraph (D) of this paragraph, adverse effects on critical areas from dredging and dredged material disposal or placement shall be avoided and otherwise minimized, and appropriate and practicable compensatory mitigation shall be required, in accordance with subsection (h) of this section.

(C) Except as provided in subparagraph (D) of this paragraph, dredging and the disposal and placement of dredged material shall not be authorized if:

(i) there is a practicable alternative that would have fewer adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches, so long as that alternative does not have other significant adverse effects;

(ii) all appropriate and practicable steps have not been taken to minimize adverse effects on coastal waters, submerged lands, critical areas, coastal shore areas, and Gulf beaches; or

(iii) significant degradation of critical areas under subsection (h)(1)(G)(v) of this section would result.

(D) A dredging or dredged material disposal or placement project that would be prohibited solely by application of subparagraph (C) of this paragraph may be allowed if it is determined to be of overriding importance to the public and national interest in light of economic impacts on navigation and maintenance of commercially navigable waterways.

(2) Adverse effects from dredging and dredged material disposal and placement shall be minimized as required in paragraph (1) of this subsection. Adverse effects can be minimized by employing the techniques in this paragraph where appropriate and practicable.

(A) Adverse effects from dredging and dredged material disposal and placement can be minimized by controlling the location and dimensions of the activity. Some of the ways to accomplish this include:

(i) locating and confining discharges to minimize smothering of organisms;

(ii) locating and designing projects to avoid adverse disruption of water inundation patterns, water circulation, erosion and accretion processes, and other hydrodynamic processes;

(iii) using existing or natural channels and basins instead of dredging new channels or basins, and discharging materials in areas that have been previously disturbed or used for disposal or placement of dredged material;

(iv) limiting the dimensions of channels, basins, and disposal and placement sites to the minimum reasonably required to serve the project purpose, including allowing for reasonable overdredging of channels and basins, and taking into account the need for capacity to accommodate future expansion without causing additional adverse effects;

(v) discharging materials at sites where the substrate is composed of material similar to that being discharged;

(vi) locating and designing discharges to minimize the extent of any plume and otherwise control dispersion of material; and

(vii) avoiding the impoundment or drainage of critical areas.

(B) Dredging and disposal and placement of material to be dredged shall comply with applicable standards for sediment toxicity. Adverse effects from constituents contained in materials discharged can be minimized by treatment of or limitations on the material itself. Some ways to accomplish this include:

(i) disposal or placement of dredged material in a manner that maintains physiochemical conditions at discharge sites and limits or reduces the potency and availability of pollutants;

(ii) limiting the solid, liquid, and gaseous components of material discharged;

(iii) adding treatment substances to the discharged material; and

(iv) adding chemical flocculants to enhance the deposition of suspended particulates in confined disposal areas.

(C) Adverse effects from dredging and dredged material disposal or placement can be minimized through control of the materials discharged. Some ways of accomplishing this include:

(i) use of containment levees and sediment basins designed, constructed, and maintained to resist breaches, erosion, slumping, or leaching;

(ii) use of lined containment areas to reduce leaching where leaching of chemical constituents from the material is expected to be a problem;

(iii) capping in-place contaminated material or, selectively discharging the most contaminated material first and then capping it with the remaining material;

(iv) properly containing discharged material and maintaining discharge sites to prevent point and nonpoint pollution; and

(v) timing the discharge to minimize adverse effects from unusually high water flows, wind, wave, and tidal actions.

(D) Adverse effects from dredging and dredged material disposal or placement can be minimized by controlling the manner in which material is dispersed. Some ways of accomplishing this include:

(i) where environmentally desirable, distributing the material in a thin layer;

(ii) orienting material to minimize undesirable obstruction of the water current or circulation patterns;

(iii) using silt screens or other appropriate methods to confine suspended particulates or turbidity to a small area where settling or removal can occur;

(iv) using currents and circulation patterns to mix, disperse, dilute, or otherwise control the discharge;

(v) minimizing turbidity by using a diffuser system or releasing material near the bottom;

(vi) selecting sites or managing discharges to confine and minimize the release of suspended particulates and turbidity and maintain light penetration for organisms; and

(vii) setting limits on the amount of material to be discharged per unit of time or volume of receiving waters.

(E) Adverse effects from dredging and dredged material disposal or placement operations can be minimized by adapting technology to the needs of each site. Some ways of accomplishing this include:

(i) using appropriate equipment, machinery, and operating techniques for access to sites and transport of material, including those designed to reduce damage to critical areas;

(ii) having personnel on site adequately trained in avoidance and minimization techniques and requirements; and

(iii) designing temporary and permanent access roads and channel spanning structures using culverts, open channels, and diversions that will pass both low and high water flows, accommodate fluctuating water levels, and maintain circulation and faunal movement.

(F) Adverse effects on plant and animal populations from dredging and dredged material disposal or placement can be minimized by:

(i) avoiding changes in water current and circulation patterns that would interfere with the movement of animals;

(ii) selecting sites or managing discharges to prevent or avoid creating habitat conducive to the development of undesirable predators or species that have a competitive edge ecologically over indigenous plants or animals;

(iii) avoiding sites having unique habitat or other value, including habitat of endangered species;

(iv) using planning and construction practices to institute habitat development and restoration to produce a new or modified environmental state of higher ecological value by displacement of some or all of the existing environmental characteristics;

(v) using techniques that have been demonstrated to be effective in circumstances similar to those under consideration whenever possible and, when proposed development and restoration techniques have not yet advanced to the pilot demonstration stage, initiating their use on a small scale to allow corrective action if unanticipated adverse effects occur;

(vi) timing dredging and dredged material disposal or placement activities to avoid spawning or migration seasons and other biologically critical time periods; and

(vii) avoiding the destruction of remnant natural sites within areas already affected by development.

(G) Adverse effects on human use potential from dredging and dredged material disposal or placement can be minimized by:

(i) selecting sites and following procedures to prevent or minimize any potential damage to the aesthetically pleasing features of the site, particularly with respect to water quality;

(ii) selecting sites which are not valuable as natural aquatic areas;

(iii) timing dredging and dredged material disposal or placement activities to avoid the seasons or periods when human recreational activity associated with the site is most important; and

(iv) selecting sites that will not increase incompatible human activity or require frequent dredge or fill maintenance activity in remote fish and wildlife areas.

(H) Adverse effects from new channels and basins can be minimized by locating them at sites:

(i) that ensure adequate flushing and avoid stagnant pockets; or

(ii) that will create the fewest practicable adverse effects on CNRAs from additional infrastructure such as roads, bridges, causeways, piers, docks, wharves, transmission line crossings, and ancillary channels reasonably likely to be constructed as a result of the project; or

(iii) with the least practicable risk that increased vessel traffic could result in navigation hazards, spills, or other forms of contamination which could adversely affect CNRAs;

(iv) provided that, for any dredging of new channels or basins subject to the requirements of §501.15 of this title (relating to Policy for Major Actions), data and information on minimization of secondary adverse effects need not be produced or evaluated to comply with this subparagraph if such data and information is produced and evaluated in compliance with §501.15(b)(1) of this title (relating to Policy for Major Actions).

(3) Disposal or placement of dredged material in existing contained dredge disposal sites identified and actively used as described in an environmental assessment or environmental impact statement issued prior to the effective date of this chapter shall be presumed to comply with the requirements of paragraph (1) of this subsection unless modified in design, size, use, or function.

(4) Dredged material from dredging projects in commercially navigable waterways is a potentially reusable resource and must be used beneficially in accordance with this policy.

(A) If the costs of the beneficial use of dredged material are reasonably comparable to the costs of disposal in a non-beneficial manner, the material shall be used beneficially.

(B) If the costs of the beneficial use of dredged material are significantly greater than the costs of disposal in a non-beneficial manner, the material shall be used beneficially unless it is demonstrated that the costs of using the material beneficially are not reasonably proportionate to the costs of the project and benefits that will result. Factors that shall be considered in determining whether the costs of the beneficial use are not reasonably proportionate to the benefits include, but are not limited to:

(i) environmental benefits, recreational benefits, flood or storm protection benefits, erosion prevention benefits, and economic development benefits;

(ii) the proximity of the beneficial use site to the dredge site; and

(iii) the quantity and quality of the dredged material and its suitability for beneficial use.

(C) Examples of the beneficial use of dredged material include, but are not limited to:

(i) projects designed to reduce or minimize erosion or provide shoreline protection;

(ii) projects designed to create or enhance public beaches or recreational areas;

(iii) projects designed to benefit the sediment budget or littoral system;

(iv) projects designed to improve or maintain terrestrial or aquatic wildlife habitat;

(v) projects designed to create new terrestrial or aquatic wildlife habitat, including the construction of marshlands, coastal wetlands, or other critical areas;

(vi) projects designed and demonstrated to benefit benthic communities or aquatic vegetation;

(vii) projects designed to create wildlife management areas, parks, airports, or other public facilities;

(viii) projects designed to cap landfills or other waste disposal areas;

(ix) projects designed to fill private property or upgrade agricultural land, if cost-effective public beneficial uses are not available; and

(x) projects designed to remediate past adverse impacts on the coastal zone.

(5) If dredged material cannot be used beneficially as provided in paragraph (4)(B) of this subsection, to avoid and otherwise minimize adverse effects as required in paragraph (1) of this subsection, preference will be given to the greatest extent practicable to disposal in:

(A) contained upland sites;

(B) other contained sites; and

(C) open water areas of relatively low productivity or low biological value.

(6) For new sites, dredged materials shall not be disposed of or placed directly on the boundaries of submerged lands or at such location so as to slump or migrate across the boundaries of submerged lands in the absence of an agreement between the affected public owner and the adjoining private owner or owners that defines the location of the boundary or boundaries affected by the deposition of the dredged material.

(7) Emergency dredging shall be allowed without a prior consistency determination as required in the applicable consistency rule when:

(A) there is an unacceptable hazard to life or navigation;

(B) there is an immediate threat of significant loss of property; or

(C) an immediate and unforeseen significant economic hardship is likely if corrective action is not taken within a time period less than the normal time needed under standard procedures. The council secretary shall be notified at least 24 hours prior to commencement of any emergency dredging operation by the agency or entity responding to the emergency. The notice shall include a statement demonstrating the need for emergency action. Prior to initiation of the dredging operations the project sponsor or permit-issuing agency shall, if possible, make all reasonable efforts to meet with council's designated representatives to ensure consideration of and consistency with applicable policies in this section. Compliance with all applicable policies in this section shall be required at the earliest possible date. The permit-issuing agency and the applicant shall submit a consistency determination within 60 days after the emergency operation is complete.

(8) Mining of sand, shell, marl, gravel, and mudshell on submerged lands shall be prohibited unless there is an affirmative showing of no significant impact on erosion within the coastal zone and no significant adverse effect on coastal water quality or terrestrial and aquatic wildlife habitat within any CNRA.

(9) The GLO and the SLB shall comply with the policies in this subsection when approving oil, gas, and other mineral lease plans of operation and granting surface leases, easements, and permits and adopting rules under the Texas Natural Resources Code, Chapters 32, 33, and 51-53, and Texas Water Code, Chapter 61, for dredging and dredged material disposal and placement. TxDOT shall comply with the policies in this section when adopting rules and taking actions as local sponsor of the Gulf Intracoastal Waterway under Texas Civil Statutes, Article 5415e-2. The TNRCC and the RRC shall comply with the policies in this subsection when issuing certifications and adopting rules under Texas Water Code, Chapter 26, and the Texas Natural Resources Code, Chapter 91, governing certification of compliance with surface water quality standards for federal actions and permits authorizing dredging or the discharge or placement of dredged material. The TPWD shall comply with the policies in this subsection when adopting rules at Chapter 57 of this title (relating to Fisheries) governing dredging and dredged material disposal and placement. The TPWD shall comply with the policies in paragraph (8) of this subsection when adopting rules and issuing permits under Texas Parks and Wildlife Code, Chapter 86, governing the mining of sand, shell, marl, gravel, and mudshell.

(k) Construction in the Beach/Dune System.

(1) Construction in critical dune areas and adjacent to Gulf beaches shall comply with the policies in this subsection.

(A) Construction within a critical dune area that results in the material weakening of dunes and material damage to dune vegetation shall be prohibited.

(B) Construction within critical dune areas that does not materially weaken dunes or materially damage dune vegetation shall be sited, designed, constructed, maintained, and operated so that adverse "effects" (as defined in §15.2 of this title (relating to Coastal Area Planning)) on the sediment budget and critical dune areas are avoided to the greatest extent practicable. For purposes of this subsection, practicability shall be determined by considering the effectiveness, scientific feasibility, and commercial availability of the technology or technique. Cost of the technology or technique shall also be considered. Adverse effects (as defined in Chapter 15 of this title (relating to Coastal Area Planning)) that cannot be avoided shall be:

(i) minimized by limiting the degree or magnitude of the activity and its implementation;

(ii) rectified by repairing, rehabilitating, or restoring the adversely affected dunes and dune vegetation; and

(iii) compensated for on-site or off-site by replacing the resources lost or damaged seaward of the dune protection line.

(C) Rectification and compensation for adverse effects that cannot be avoided or minimized shall provide at least a one-to-one replacement of the dune volume and vegetative cover, and preference shall be given to stabilization of blowouts and breaches and on-site compensation.

(D) The ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches shall be preserved and enhanced.

(E) Non-structural erosion response methods such as beach nourishment, sediment bypassing, nearshore sediment berms,

and planting of vegetation shall be preferred instead of structural erosion response methods. Subdivisions shall not authorize the construction of a new erosion response structure within the beach/dune system, except for a retaining wall located more than 200 feet landward of the line of vegetation. Subdivisions shall not authorize the enlargement, improvement, repair or maintenance of existing erosion response structures on the public beach. Subdivisions shall not authorize the repair or maintenance of existing erosion response structures within 200 feet landward of the line of vegetation except as provided in §15.6(d) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(2) The GLO shall comply with the policies in this subsection when certifying local government dune protection and beach access plans and adopting rules under the Texas Natural Resources Code, Chapters 61 and 63. Local governments required by the Texas Natural Resources Code, Chapters 61 and 63, and Chapter 15 of this title (relating to Coastal Area Planning) to adopt dune protection and beach access plans shall comply with the applicable policies in this subsection when issuing beachfront construction certificates and dune protection permits.

(l) Development in Coastal Hazard Areas.

(1) Subdivisions participating in the National Flood Insurance Program shall adopt ordinances or orders governing development in special hazard areas under Texas Water Code, Chapter 16, Subchapter I, and Texas Local Government Code, Chapter 240, Subchapter Z, that comply with construction standards in regulations at Code of Federal Regulations, Title 44, Parts 59-60, adopted pursuant to the National Flood Insurance Act, 42 United States Code Annotated, §4001 et seq.

(2) Pursuant to the standards and procedures under the Texas Natural Resources Code, Chapter 33, Subchapter H, the GLO shall adopt or issue rules, recommendations, standards, and guidelines for erosion avoidance and remediation and for prioritizing critical erosion areas.

(m) Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers.

(1) Development of new infrastructure or major repair of existing infrastructure within or supporting development within Coastal Barrier Resource System Units and Otherwise Protected Areas designated on maps dated October 24, 1990, under the Coastal Barrier Resources Act, 16 United States Code Annotated, §3503(a), shall comply with the policies in this subsection.

(A) Development of publicly funded infrastructure shall be authorized only if it is essential for public health, safety, and welfare, enhances public use, or is required by law.

(B) Infrastructure shall be located at sites at which reasonably foreseeable future expansion will not require development in critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(C) Infrastructure shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects on critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas from:

(i) construction and maintenance of roads, bridges, and causeways; and

(ii) direct release to coastal waters, critical areas, critical dunes, Gulf beaches, and washover areas within Coastal Barrier Resource System Units or Otherwise Protected Areas of oil, hazardous substances, or stormwater runoff.

(D) Where practicable, infrastructure shall be located in existing rights-of-way or previously disturbed areas to avoid or minimize adverse effects within Coastal Barrier Resource System Units or Otherwise Protected Areas.

(E) Development of infrastructure shall occur at sites and times selected to have the least adverse effects practicable within Coastal Barrier Resource System Units or Otherwise Protected Areas on critical areas, critical dunes, Gulf beaches, and washover areas and on spawning or nesting areas or seasonal migrations of commercial, recreational, threatened, or endangered terrestrial or aquatic wildlife.

(2) TNRCC rules and approvals for the creation of special districts and for infrastructure projects funded by issuance of bonds by water, sanitary sewer, and wastewater drainage districts under Texas Water Code, Chapter 50; water control and improvement districts under Texas Water Code, Chapter 50; municipal utility districts under Texas Water Code, Chapter 54; regional plan implementation agencies under Texas Water Code, Chapter 54; special utility districts under Texas Water Code, Chapter 65; stormwater control districts under Texas Water Code, Chapter 66; and all other general and special law districts subject to and within the jurisdiction of the TNRCC, shall comply with the policies in this subsection. TxDOT rules and approvals under Texas Civil Statutes, Article 6663 et seq, governing planning, design, construction, and maintenance of transportation projects, shall comply with the policies in this subsection.

(n) Development in State Parks, Wildlife management Areas or Preserves. Development by a person other than the Parks and Wildlife Department that requires the use or taking of any public land in such areas shall comply with Texas Parks and Wildlife Code, Chapter 26.

(o) Alteration of Coastal Historic Areas.

(1) Development affecting a coastal historic area shall avoid and otherwise minimize alteration or disturbance of the site unless the site's excavation will promote historical, archaeological, educational, or scientific understanding.

(2) The THC shall comply with the policies in this subsection when adopting rules and issuing permits under the Texas Natural Resources Code, Chapter 191, governing alteration of coastal historic areas. The THC shall comply with the policies in this subsection when issuing reviews under the National Historic Preservation Act, §106 (16 United States Code Annotated, §470f), and the regulations enacted pursuant thereto, Code of Federal Regulations, Title 36, Chapter 1, Part 63.

(p) Transportation Projects.

(1) Transportation construction projects and maintenance programs within the coastal zone shall comply with the policies in this subsection.

(A) Pollution prevention procedures shall be incorporated into the construction and maintenance of transportation projects to minimize pollutant loading to coastal waters from erosion and sedimentation, use of pesticides and herbicides for maintenance of rights-of-way, and other pollutants from stormwater runoff.

(B) Transportation projects shall be located at sites that to the greatest extent practicable avoid and otherwise minimize the potential for adverse effects from construction and maintenance of additional roads, bridges, causeways, and other development associated with the project; and direct release to CNRAs of pollutants from oil or hazardous substance spills, contaminated sediments or stormwater runoff.

(C) Where practicable, transportation projects shall be located in existing rights-of-way or previously disturbed areas if necessary to avoid or minimize adverse effects.

(D) Where practicable, transportation projects shall be located at sites at which future expansion will not require development in coastal wetlands except where such construction is determined to be essential for evacuation in the case of a natural disaster.

(E) Construction and maintenance of transportation projects shall avoid the impoundment and draining of coastal wetlands. If impoundment or draining cannot be avoided, adverse effects to the impounded or drained wetlands shall be mitigated in accordance with the sequencing requirements of subsection (h) of this section.

(F) Construction of transportation projects shall occur at sites and times selected to have the least adverse effects practicable on recreational uses of CNRAs and on spawning or nesting seasons or seasonal migrations of terrestrial or aquatic species.

(G) Beach-quality sand from maintenance of roadways adjacent to Gulf beaches shall be beneficially used by placement on Gulf beaches where practicable. Where placement on Gulf beaches is not practicable, the material shall be placed in critical dune areas.

(2) TxDOT rules and project approvals under Texas Civil Statutes, Article 6663b and 6663c, and Texas Civil Statutes, Article 6674a et seq, governing transportation projects within the coastal zone, shall comply with the policies in this subsection.

(q) Emission of Air Pollutants. TNRCC rules under Texas Health and Safety Code, Chapter 382, governing emissions of air pollutants, shall comply with regulations at Code of Federal Regulations, Title 40, adopted pursuant to the Clean Air Act, 42 United States Code Annotated, §7401, et seq, to protect and enhance air quality in the coastal area so as to protect CNRAs and promote the public health, safety, and welfare.

(r) Appropriations of Water.

(1) Impoundments and diversion of state water within 200 stream miles of the coast, to commence from the mouth of the river thence inland, shall comply with the policies in this subsection.

(A) The TNRCC shall administer the law so as to promote the judicious use and maximum conservation and protection of the quality of the environment and the natural resources of the state. It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(i) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(ii) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(iii) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(iv) the conservation and development of its forest, water, and hydroelectric power;

(v) the navigation of the state's inland and coastal waters; and

(vi) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

(B) In this subsection, "beneficial inflows" means a salinity, nutrient, and sediment loading regime adequate to maintain an ecologically sound environment in the receiving bay and estuary system that is necessary for the maintenance of productivity of economically important and ecologically characteristic sport or commercial fish and shellfish species and estuarine life upon which such fish and shellfish are dependent.

(C) In its consideration of an application for a permit to store, take, or divert water, the TNRCC shall assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas. For permits issued within an area that is 200 river miles of the coast, to commence from the mouth of the river thence inland, the TNRCC shall include in the permit, to the greatest extent practicable when considering all public interests, those conditions considered necessary to maintain beneficial inflows to any affected bay and estuary system.

(D) For the purposes of making a determination under subparagraph (C) of this paragraph, the TNRCC shall consider among other factors:

(i) the need for periodic freshwater inflows to supply nutrients and modify salinity to preserve the sound environment of the bay or estuary, using any available information, including studies and plans specified in and other studies considered by the TNRCC to be reliable; together with existing circumstances, natural or otherwise, that might prevent the conditions imposed from producing benefits;

(ii) the ecology and productivity of the affected bay and estuary system;

(iii) the expected effects on the public welfare of not including in the permit some or all of the conditions considered necessary to maintain the beneficial inflows to the affected bay or estuary;

(iv) the quantity of water requested and the proposed use of water by the applicant, as well as the needs of those who would be served by the applicant;

(v) the expected effects on the public welfare of the failure to issue all or part of the permit being considered; and

(vi) for the purposes of this subsection, the declarations as to preferences for competing uses of water as found in Texas Water Code, §11.024 and §11.033, as well as the public policy statement in subparagraph (A) of this paragraph.

(E) In its consideration of an application to store, take, or divert water, the TNRCC shall consider the effect, if any, of the issuance of the permit on existing instream uses and water quality of the stream or river to which the application applies. The TNRCC shall also consider the effect, if any, of the issuance of the permit on fish and wildlife habitats.

(F) On receipt of an application for a permit to store, take, or divert water, the TNRCC shall send a copy of the permit application and any subsequent amendments to the TPWD. In making a final decision on any application for a permit, the TNRCC, in addition to other information, evidence, and testimony presented, shall consider all information, evidence, or testimony presented by the TPWD and the TWDB.

(G) Permit conditions relating to beneficial inflows to affected bays and estuaries and instream uses may be suspended by the TNRCC if the TNRCC finds that an emergency exists and cannot practically be resolved in other ways. Before the TNRCC suspends a permit under this subparagraph, it must give written notice to the TPWD of the proposed suspension. The TNRCC shall give the TPWD an opportunity to submit comments on the proposed suspension within 72 hours from such time and the TNRCC shall consider those comments before issuing its order imposing the suspension.

(H) In its consideration of an application for a permit under this section, the TNRCC shall assess the effects, if any, of the issuance of the permit on water quality in coastal waters. In its consideration of an application for a permit to store, take, or divert water in excess of 5,000 acre feet per year, the commission shall assess the effects, if any, on the issuance of the permit on fish and wildlife habitats and may require the applicant to take reasonable actions to mitigate adverse effects on such habitat. In determining whether to require an applicant to mitigate adverse effects on a habitat, the TNRCC may consider any net benefit to habitat produced by the project. The TNRCC shall offset against any mitigation required by the United States Fish and Wildlife Service pursuant to Code of Federal Regulations, Title 33, §§320-330, any mitigation authorized by this section.

(I) Unappropriated water and other water of the state stored in any facility acquired by and under the control of the TWDB may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or other calamity, if the TNRCC first determines the existence of the emergency and requests the TWDB to release the water.

(J) Five percent of the annual firm yield of water in any reservoir and associated works constructed with state financial participation within 200 river miles of the coast, to commence from the mouth of the river thence inland, is appropriated to the TPWD for use to make releases to bays and estuaries and for instream uses, and the TNRCC shall issue permits for this water to the TPWD under procedures adopted by the TNRCC. This subparagraph applies only to reservoirs and associated works on which construction begins on or after September 1, 1985. This subsection does not limit or repeal any other authority of or law relating to the TPWD or the TNRCC.

(K) The TWDB, in coordination with the TNRCC and TPWD, shall identify ways to assist in providing flows to meet instream needs, including protection of water quality, protection of terrestrial or aquatic wildlife habitat, and bay and estuary inflow needs, in the implementation of the Texas Water Bank, Texas Water Code, Chapter 15, Subchapter K. This may include, but not be limited to, the purchase by the TPWD and/or the TWDB of water rights deposited in the Texas Water Bank in order to provide for existing instream uses and beneficial inflows to bays and estuaries if funds are available and such purchase is not prohibited by law. The TNRCC shall facilitate the approval of any necessary permit amendments to achieve this purpose.

(L) An applicant for a new or amended water right permit shall submit a water conservation plan in accordance with 30 TAC §295.9 (relating to Conservation Plan). The TNRCC shall consider the information contained in the conservation plan in determining whether any feasible alternative to the proposed appropriation exists, whether the proposed amount to be appropriated as measured at the point of diversion is reasonable and necessary for the proposed use, the term and other conditions of the water right and to ensure that reasonable diligence will be used to avoid waste and achieve water conservation. Based upon its review, the TNRCC may deny or grant, in whole or in part, the requested appropriation.

(2) The TNRCC rules and authorizations under Texas Water Code, Chapter 11, governing review and action on applications for new permits or amendments proposing changes to existing permits for diversions or impoundments of state water within 200 stream miles of the coast, and TNRCC rules and approvals governing creation of districts and issuance of district bonds for levee and flood control projects within the coastal zone, shall comply with the policies in this subsection.

(s) Levee and Flood Control Projects.

(1) Drainage, reclamation, channelization, levee construction or modification, or flood- or floodwater-control infrastructure projects shall be designed, constructed, and maintained to avoid the impoundment and draining of coastal wetlands to the greatest extent practicable. If impoundment or draining of coastal wetlands cannot be avoided, adverse effects to the wetlands shall be mitigated in accordance with the sequencing requirements in subsection (h) of this section.

(2) TNRCC rules and approvals for the levee construction, modification, drainage, reclamation, channelization, or flood- or floodwater-control projects, pursuant to the Texas Water Code, §16.236, shall comply with the policies in this subsection.

(t) Marine Fishery Management.

(1) Fishery management measures shall conserve the state's renewable marine fishery resources, based upon the best available information, emphasizing protection and enhancement of the marine environment in such a manner as to provide for optimum sustained benefits and use to coastal fishing communities and to all the people of the state for present and future generations.

(2) Fishery management measures shall:

(A) protect the continuing health and sustainability of the marine fisheries resources of the state;

(B) be based upon the best information available, including biological, sociological, economic, and other information deemed relevant by the council;

(C) permit reasonable means and quantities of annual harvest, consistent with maximum practicable sustainable stock abundance on a continuing basis;

(D) manage fish stocks as an integral biological unit, to the greatest extent practicable;

(E) assure proper quality control of marine resources that enter commerce;

(F) be fair and equitable to all the people of the state and, to the maximum extent practicable, be carried out so that no person acquires an excessive share of fishing privileges;

(G) include opportunity for public review and comment on proposed management measures; and

(H) be consistent, to the maximum extent practicable, with federal fishery management measures, rules, and fishery management plans and the rules of other states or interstate commissions.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 505. COUNCIL PROCEDURES FOR STATE CONSISTENCY WITH COASTAL

MANAGEMENT PROGRAM GOALS AND POLICIES

The Coastal Coordination Council (Council) adopts, without changes to the text, the proposed amendments to §505.30, relating to Agency Consistency Determinations, §505.31, relating to Preliminary Review of Proposed Agency Actions by the Coastal Coordination Council, §505.38, relating to Council Action on Review of a Proposed Agency Action, and §505.51 relating to Request for a Non-Binding Advisory Opinion and Council Action. The proposed amendments were published in the May 19, 2000, edition of the *Texas Register* (25 TexReg 4487). The Council voted to adopt these amendments at its regularly scheduled meeting on June 28, 2000.

These rules are adopted concurrently with amendments to Chapter 501, relating to Coastal Management Program, and Chapter 506, relating to Council Procedures for Federal Consistency with Coastal Management Program Goals and Policies. Together, the amendments to Chapter 505 and Chapters 501 and 506 are part of a single rulemaking action.

The adopted amendment to §505.30(d), relating to Agency Consistency Determination, has deleted the requirement that an agency provide the Council Secretary with notice of proposed actions that are subject to the Coastal Management Program (CMP). The Council's experience in implementing and administering the CMP has been that this provision and procedure were irrelevant and inefficient in that the procedure did not advance the CMP goals and policies.

The adopted amendments to §505.31(c), (d) and (e), relating to the Permitting Assistance Group, delete provisions relating to Permitting Assistance. The permitting assistance rules are now set forth under Chapter 504, Subchapter A. The remaining subsections (c) and (d) were reformatted for clarity.

The adopted amendment to §505.38(a), relating to Council Action on Review of a Proposed Agency Action, clarifies that, as required under §505.35(e), relating to Council Procedures for Review of a Proposed Agency Action, if the Council protests a proposed action, the Council must submit its findings to the agency or subdivision proposing the action within 26 days after the date the agency or subdivision proposed the action.

The adopted amendment to §505.51(b), relating to Request for a Non-Binding Advisory Opinion and Council Action, clarifies that, as required under subsection (d) of that section, the Council must consider a general plan within 90 days of receiving the request.

No comments were received concerning the proposed amendments to Chapter 505.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted amendments as a "major environmental rule." Under the Government Code, a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The adopted amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, nor are the amendments adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these adopted amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile (512) 463-6311.

SUBCHAPTER C. CONSISTENCY AND COUNCIL REVIEW OF PROPOSED STATE AGENCY ACTIONS

31 TAC §§505.30, 505.31, 505.38

The amendments are adopted under Texas Natural Resources Code §33.053(a)(7), which provides the Council with authority to describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of coastal natural resource areas (CNRAs) by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP; and §33.205 which provides that the council by rule shall establish a process by which an applicant for a permit or other proposed action or an agency or subdivision proposing an action may request and receive a preliminary consistency review, and a process by which an applicant may request and receive assistance with filing applications for permits or other proposed actions.

Natural Resources Code, §§33.053(a)(7), 33.055, 33.202, and 33.204 are affected by these adopted amendments.

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 August 7, 2000.

TRD-200005442
Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: August 27, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 305-9129

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SUBCHAPTER D. COUNCIL ADVISORY OPINIONS ON GENERAL PLANS

31 TAC §505.51

The amendment is adopted under Texas Natural Resources Code §33.053(a)(7), which provides the Council with authority to describe an organizational structure for implementing and administering the CMP; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; and §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP.

Natural Resources Code, §§33.053(a)(7), 33.055, 33.202, and 33.204 are affected by the adopted amendment.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
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Proposal publication date: May 19, 2000
For further information, please call: (512) 305-9129

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CHAPTER 506. COUNCIL PROCEDURES FOR FEDERAL CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM GOALS AND POLICIES

31 TAC §§506.11, 506.12, 506.20, 506.24 - 506.26, 506.32 - 506.34, 506.41, 506.42

The Coastal Coordination Council (Council) adopts, without changes to the text, the proposed amendments to §506.11, relating to Definitions, §506.12, relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program, §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, §506.24, relating to Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program, §506.25, relating to Public Notice and Comment, §506.26, relating to Referral of Federal Agency Activities, §506.32, relating to Public Notice and Comment, §506.33, relating to Referral of Federal Agency Action, §506.34, relating to Council Hearing to Review a Federal Agency Action, §506.41, relating to Public Notice and Comment, and §506.42, relating to Referral of an Outer Continental Shelf Plan. The proposed amendments were published in the May 19, 2000, edition of the *Texas Register* (25 TexReg 4490). The Council voted to adopt these amendments at its regularly scheduled meeting on June 28, 2000.

These rules are adopted concurrently with the adopted amendments to Chapter 501, relating to Coastal Management Program, and Chapter 505, relating to Council Procedures for State Consistency with Coastal Management Program Goals and Policies. Together, the proposed amendments to Chapter 506 and Chapters 501 and 505 are part of a single rulemaking action.

The adopted amendments to §506.11, relating to Definitions, provide definitions for the terms "administratively complete" and "federal development project." The definition for "administratively complete" is based on the consistency information required under §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, §506.30, relating to Consistency Certifications for Federal Agency Actions, and §506.40, relating to Consistency Certifications for Outer Continental Shelf Plans. The definition for "federal development project" is the same as the federal definition at Code of Federal Regulations, Title 15, §930.31(b).

The adopted amendments to §506.12(a)(1)(F) and (b)(1)(A), relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program, list as federal agency activities subject to the CMP the promulgation of fishery management measures by the National Marine Fisheries Service (NMFS). Under the adopted amendments to Chapter 501, §501.14(t), relating to marine fishery management policies, the rule now establishes a specific enforceable policy that would apply to the promulgation of fishery management measures by NMFS. The adopted amendment to §506.12(a)(2)(A)(iv) lists as a federal agency activity subject to the CMP the development of total maximum daily loads (TMDLs) and associated federally-developed TMDL implementation plans by the U.S. Environmental Protection Agency under the Clean Water Act, 33 U.S.C. §1313. The adopted amendments to §506.12(a)(2)(A)(iii), (a)(2)(B)(iii)-(iv), (a)(2)(C)(i)-(ii), (a)(2)(D), (a)(2)(E)(i)-(iii), (a)(2)(F), and (b)(2)(A)(i)-(ii), clarify terms to clearly identify the listed actions and to conform to changes in federal law.

The adopted amendments to §506.12(f), relating to Federal Agency Actions, Federal Agency Activities and Development Projects, and Outer Continental Shelf Plans Subject to the Coastal Management Program, provides for the one-time review of federal agency activities that are not listed in subsection (a)(1) of this section, clarifies the references to other subsections, and reformats the subsection for ease in reading. The adopted amendments will allow for the one-time review of federal agency activities other than those listed under §506.12(a)(1) and (b)(1). Following the one-time review of an unlisted federal agency action or activity, the Council must amend the list of actions and activities described in §506.12(a) before the Council may again review the action or activity that was subject to one-time review.

The adopted amendment to §506.20, relating to Consistency Determinations for Federal Agency Activities and Development Projects, has created a new subsection (d) that provides that the consistency determination for fishery management measures promulgated by NMFS will be reviewed by the Texas Parks and Wildlife Department (TPWD). The purpose of this provision is to affirm TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. As provided under §506.26 of this title, relating to Referral of Federal Agency Activities, the Council will review a fishery management measure promulgated by NMFS if three or more Council members agree that the management

measure presents a significant unresolved issue regarding consistency with the CMP goals and policies.

Concurrent with this rulemaking, the Council is adopting a general consistency concurrence to affirm the TPWD's primacy in the determination of Texas' fishery management policies and to ensure that the Council's review of federal management measures for consistency with the CMP goals and policies is consistent with the TPWD's state fishery management policies. The general consistency concurrence finds that where NMFS promulgates, as a federal rule, fishery management measures that incorporate and adopt the TPWD's state fishery management policies, the Council deems the federal fishery management measures to be consistent with the CMP goals and policies. A copy of the general consistency concurrence may be obtained by writing to Ms. Janet Fatheree, Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, janet.fatheree@glo.state.tx.us, facsimile (512)475-0680.

The adopted amendment to §506.24(c), relating to Consistency Determinations for Federal Agency Activities Initiated Prior to Federal Approval of the Coastal Management Program, has revised the provision relating to consistency determinations for the United States Army Corps of Engineers' ongoing maintenance of commercially navigable waterways to include a reference to the amendments to the Memorandum of Agreement Between the Texas Coastal Coordination Council and the United States Army Corps of Engineers, dated October 27, 1994, that have been approved since this section was adopted.

The adopted amendments to §506.25(a)-(b), relating to Public Notice and Comment; §506.32(a)-(b), relating to Public Notice and Comment; and §506.41(a)-(b), relating to Public Notice and Comment, provide for the publication of notice of a consistency determination on the Council's web site as well as in the *Texas Register* and provide that the 30-day public comment period will be measured from the date of publication on the Council's web site.

The adopted amendments add a definition for "administratively complete" that will affect the deadlines for the Council's review of a consistency determination or consistency certification for a federal agency activity, a federal agency action, and Outer Continental Shelf Plan. The deadlines for the Council's review of a consistency determination or certification will be calculated from the date when the consistency determination or certification is "administratively complete," as defined in §506.11. The term "administratively complete" has been added to §506.25(a), relating to Public Notice and Comment; §505.26(c)-(e), relating to Referral of Federal Agency Activities; §506.32(a), relating to Public Notice and Comment; §506.33(b)-(e), relating to Referral of Federal Agency Action; §506.34(a), relating to Council Hearing to Review a Federal Agency Action; §506.41(a), relating to Public Notice and Comment; and §506.41(b)-(e), relating to Referral of an Outer Continental Shelf Plan.

A public hearing on the proposed amendments was held on May 18, 2000, in Austin as part of the regularly scheduled meeting of the Council's Executive Committee. At the hearing, comments in support of the proposed amendments providing for the review of federal fishery management measures were provided by the Texas Recreational Fishing Alliance and the Coastal Conservation Association. No other comments were received regarding the proposed amendments to Chapter 506.

Pursuant to Texas Government Code §2001.0225, a regulatory analysis is not required for the adopted amendments as a "major environmental rule." Under the Government Code, a major environmental rule is a rule the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. A regulatory analysis is required only when a major environmental rule exceeds a standard set by federal law, exceeds an express requirement of state law, exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, or are adopted solely under the general powers of the Council. The adopted amendments do not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state or federal program, nor are the amendments adopted solely under the general powers of the Council.

The General Land Office has assisted the Council in preparing a takings impact assessment for these adopted amendments and determined that the amendments will not result in the taking of private real property. To receive a copy of the takings impact assessment, please send a written request to Ms. Melinda Tracy, Texas Register Liaison, General Land Office, P.O. Box 12873, Austin, Texas 78711-2873, melinda.tracy@glo.state.tx.us, facsimile (512) 463-6311.

These amendments are adopted under Texas Natural Resources Code §33.053(a)(2), (4)-(7), and (10), which provide the Council with authority to analyze coastal land and water uses, identify land and water uses that would have a direct and significant impact on coastal waters, recommend incremental authority necessary to protect coastal lands and waters, inventory coastal natural resource areas (CNRAs), describe an organizational structure for implementing and administering the CMP, and list each federal activity that may have a direct and significant detrimental impact on CNRAs; §33.055 which requires that the Council hold public hearings, as deemed appropriate, to consider amendments to the CMP; §33.202 which provides that it is the policy of the state to make more effective and efficient use of public funds and to provide for more effective and efficient management of CNRAs by continually reviewing principal coastal problems of state concern and by coordinating the performance of government programs affecting CNRAs; §33.204 which authorizes the Council to adopt by rule goals and policies for the CMP; and §33.206(d) which authorizes the Council to adopt procedural rules for the review of federal actions, activities, and outer continental shelf plans.

Natural Resources Code, §§33.053(a)(2), (4)-(7), and (10), 33.055, 33.202, 33.204, and 33.206(d) are affected by these adopted amendments.

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 August 7, 2000,

2000.

TRD-200005444

Larry Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Effective date: August 27, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 305-9129

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER L. MOTOR FUEL TAX

34 TAC §3.201

The Comptroller of Public Accounts adopts an amendment to §3.201, concerning the motor fuel testing fee, with changes to the proposed text as published in the March 31, 2000, issue of the *Texas Register* (25 TexReg 2766).

As requested by the Commissioner of Agriculture and authorized by Texas Civil Statutes, Article 8614, the Comptroller of Public Accounts collects a fee on a periodic basis from each distributor and supplier who deals in motor fuel. This proposed amendment will change the due date of the fee.

The changes are minor grammar revisions.

No comments were received regarding adoption of the amendment.

This amendment is adopted under the Tax Code, §111.002 and §111.0022, which provide the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the fees the Comptroller is authorized to administer or collect.

The amendment implements Texas Civil Statutes, Article 8614, §9.

§3.201. Motor Fuel Testing Fee.

(a) Motor fuel testing fee. An annual fee, as determined under subsection (b) of this section, is imposed on every person who holds, or is required to hold, a motor fuel distributor or supplier permit under the Tax Code, Chapter 153, as of January 1 of each year.

(b) Annual fee amount. The fee is based on the total amount of net taxable gallons of gasoline and/or diesel fuel sold and reported to the comptroller on the permit holder's Texas Fuels Tax Report for the previous calendar year. The fee amount due is based on the following schedule.
Figure: 34 TAC §3.201(b) (No Change)

(c) Due date of the fee. The motor fuel testing fee shall be due on July 1 of each year.

(d) Report forms. Each holder of a motor fuels distributor or supplier permit must remit the fee on a form that the comptroller prescribes. The fact that a permit holder does not receive the form, or does not receive the correct form, from the comptroller does not relieve the permit holder of the responsibility for payment of the required fee.

(e) Payment of the fee. On or before the due date of each year, every person who held, or was required to hold, a motor fuels distributor or supplier permit on January 1 of that year shall remit to the comptroller the total fee amount due.

(f) Penalty. Penalties due on delinquent fees and reports shall be imposed as provided by the Tax Code, §111.061.

(g) Interest. Interest due on delinquent fees shall be imposed as provided by the Tax Code, §111.060.

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 August 7, 2000.

TRD-200005439
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: August 27, 2000
Proposal publication date: March 31, 2000
For further information, please call: (512) 463-4062

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SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.330

The Comptroller of Public Accounts adopts an amendment to §3.330, concerning data processing services, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6076).

The amendment redefines data processing services reflecting changes made in Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999, regarding Internet access service, and reduces the taxable sales price to 80% of the amount billed for data processing services. The amendment also adds subsections (a)(2) and (a)(3) defining the terms Internet and Internet access.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.00393 and §151.00394.

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 August 4, 2000.

TRD-200005432
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: August 24, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-3699

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34 TAC §3.342

The Comptroller of Public Accounts adopts an amendment to §3.342, concerning information services, without changes to the proposed text as published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6078).

The amendment redefines "information services" reflecting changes made by Senate Bill 441, 76th Legislature, 1999, effective October 1, 1999, regarding Internet access service. The bill also reduces the taxable sales price to 80% of the amount billed for the information service. The amendment includes definitions of Internet and Internet access service and refers providers of Internet access services to §3.366 of this title (relating to Internet Access Services). The amendment informs taxpayers that, effective October 1, 1999, 20% of the charge for information services will be exempt from sales and use tax.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §151.00393 and §151.00394.

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 August 4, 2000.

TRD-200005431
Martin Cherry
Deputy General Counsel for Tax Policy and Agency Affairs
Comptroller of Public Accounts
Effective date: August 24, 2000
Proposal publication date: June 23, 2000
For further information, please call: (512) 463-3699

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVERS LICENSE RULES

SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.21

The Texas Department of Public Safety adopts an amendment to §15.21, concerning Application Requirements- Original, Renewal, Duplicate, Identification Certificates, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4496) and will not be republished.

The justification for the section will be more efficient administration of the process involved in obtaining a driver license.

The amendment adds language to the section in order to align the rule with Texas Transportation Code, §521.121(4)(b) and the department's current procedure of using an applicant's digital (facsimile) signature for the production of a driver license.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §521.005.

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 August 3, 2000.

TRD-200005428
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 23, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 424-2135

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION LICENSING

37 TAC §§23.1, 23.2, 23.8, 23.10

The Texas Department of Public Safety adopts amendments to §§23.1, 23.2, 23.8, and 23.10, concerning Vehicle Inspection Station Licensing, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4496) and will not be republished.

The justification for the sections will be more efficient administration of the Motor Vehicle Inspection Program.

The amendment to §23.1 deletes subsection (e), which creates an unreasonable and unenforceable requirement on an inspection station by preventing a station from making a new application within one year of the withdrawal of the original application. Amendments to §23.2 and §23.8 delete language requiring an inspection lane to be clearly marked with a 4" x 8" line to calibrate the headlight machine. Headlight aim is no longer a requirement and the marked lane is no longer necessary. §23.10(a) is amended to delete the requirement that inspection stations mount a 4' x 4' board on the wall of the display area, since this created an unnecessary financial burden. The previous rule required stations to buy a full sheet of plywood and cut it in half. Stations will still have to provide a display area but this can be on a wall or other area.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §548.002,

which authorizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

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 August 3, 2000.

TRD-200005425
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 23, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER B. GENERAL INSPECTION REQUIREMENTS

37 TAC §23.26, §23.27

The Texas Department of Public Safety adopts amendments to §23.26 and §23.27 concerning General Inspection Requirements, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4497) and will not be republished.

The justification for the sections will be more efficient administration of the Motor Vehicle Inspection Program.

The amendment to §23.26 deletes subsection (b)(2) because inspection stations are now allowed to inspect large vehicles such as motor homes outside the inspection lane/building. The amendment to §23.27 adds language to subsection (j) which requires government vehicles in emission counties to be inspected.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

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 August 3, 2000.

TRD-200005426
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 23, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 424-2135

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SUBCHAPTER D. VEHICLE INSPECTION RECORDS

37 TAC §23.51

The Texas Department of Public Safety adopts an amendment to §23.51, concerning Vehicle Inspection Records, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4498) and will not be republished.

The justification for the section will be more efficient administration of the Motor Vehicle Inspection Program and the deterrence of theft.

The amendment adds out of state identification certificates (VI-30-A forms) to the list of items which will be kept locked at all times. These VI-30-A forms are used to register vehicles and are a government document. Theft of forms would enhance a thief's chance at registering a stolen vehicle. Therefore, these should be kept locked just as the inspection certificates and number inserts are kept locked.

No comments were received regarding adoption of the amendment.

The amendment is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce the chapter on Compulsory Inspection of Vehicles.

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 August 3, 2000.

TRD-200005427
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: August 23, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 424-2135

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CHAPTER 25. SAFETY RESPONSIBILITY REGULATIONS

37 TAC §§25.19-25.21

The Texas Department of Public Safety adopts amendments to §§25.19-25.21, concerning Safety Responsibility Regulations, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4499) and will not be republished.

The justification for the sections will be current and updated rules and more efficient administration of Safety Responsibility Regulations.

The amendments are necessary to correct outdated statutory references, and to ensure that individuals are fully informed regarding the types of financial responsibility that the department accepts for driver's license road tests, traffic enforcement contacts and during accident investigations.

No comments were received regarding adoption of the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules, considered necessary for carrying out the department's work, and Texas Transportation Code, §601.021, which provides that the department shall administer and enforce this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 3, 2000.

TRD-200005429
Thomas A. Davis, Jr.
Director
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Effective date: August 23, 2000
Proposal publication date: May 19, 2000
For further information, please call: (512) 424-2135

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PART 11. TEXAS JUVENILE PROBATION COMMISSION

CHAPTER 349. STANDARDS FOR CHILD ABUSE AND NEGLECT INVESTIGATIONS IN SECURE JUVENILE FACILITIES

SUBCHAPTER A. INTAKE, INVESTIGATION, AND ASSESSMENT

37 TAC §349.118

The Texas Juvenile Probation Commission adopts amended §349.118 concerning administrative review of investigation findings in cases of child abuse and/or neglect in secure juvenile facilities. Section 349.118 is adopted without changes to the proposed text as published in the March 17, 2000, issue (25 TexReg 2320) and will not be republished.

TJPC adopts this rule in an effort to clarify the role of the Texas Advisory Council on Juvenile Services in the investigation of child abuse and neglect in secure juvenile facilities and to authorize final appeals of disputed findings to the State Office of Administrative Hearings (SOAH).

Public comment: Public comment was received by Dallas County Juvenile Probation on the proposed language in include "any policies referenced to by the designated perpetrator or designated victim/perpetrator, or any policies deemed relevant by the review committee."

Agency response: In the review process, the Committee is responsible for reviewing the findings of the TJPC investigation. Therefore, if the Designated Perpetrator has an issue with TJPC's rules or policies, he/she should address those at the time of the investigation. To wait until the review process would be untimely. For example: When reviewing a case, an Appellate Court cannot hear new evidence, they are limited to a review of what occurred.

Public comment: Comment was received Smith County Juvenile Probation that the three member review committee referenced in the proposed language allows for more outside review and a reduction of local control and autonomy for each department.

Agency response: The Review Committee would be assigned the task of reviewing the findings of the investigation done by TJPC, not the local investigation. Therefore, the review of TJPC investigations should not fall under local control or review on the local level.

These standards are adopted under §141.042 of the Texas Human Resource Code, which provides the Texas Juvenile Probation Commission with the authority to adopt reasonable rules which provide minimum standards for juvenile boards.

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 August 2, 2000.

TRD-200005399
Lisa Capers
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Proposal publication date: March 17, 2000
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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. TEXAS DEPARTMENT OF HUMAN SERVICES

CHAPTER 54. FAMILY VIOLENCE PROGRAM

The Texas Department of Human Services (DHS) adopts the repeal of §54.410 and §54.526 without changes to the proposed text as published in the February 25, 2000, issue of the *Texas Register* (25 TexReg 1566). Amendments to §§54.101, 54.204, 54.406, 54.521, 54.703, and 54.804, and new §§54.1001, 54.1005, 54.1101, 54.1207, 54.1302,54.140, 54.1403, 54.1404, and 54.1501 - 54.1503, are adopted with changes to the proposed text. Amendments to §§54.203, 54.205, 54.306, 54.308, 54.310 - 54.312, 54.402, 54.405, 54.407, 54.409, 54.414, 54.502, 54.504, 54.505, 54.507, 54.519, 54.606, 54.706, 54.707, 54.709, 54.710, 54.713, 54.718, 54.801, 54.806, and 54.808 - 54.811; new subchapters I, J, K, L, M, N, and O; and new §§54.410, 54.526, 54.527, 54.901 - 54.904, 54.1002 - 54.1004, 54.1006 - 54.1008, 54.1102 - 54.1114, 54.1201 - 54.1206, 54.1301, 54.1303, 54.1402, and 54.1405 - 54.1414, are adopted without changes to the proposed text and will not be republished.

At the request of the department the Texas Council on Family Violence convened a rules workgroup made up of advocates from across the state. Additionally, comments on the existing rules were solicited from all shelter center contractors. The workgroup met several times and recommended revisions to the department rules that clarify program, fiscal, and administrative requirements. The department utilized the recommendations in developing the amendments and one new rule. The new rule will function by ensuring that employees of shelter centers who are victims of domestic violence are offered assistance by their employer as they take steps to live free from violence.

The amendments and new sections will function by ensuring that employees who are victims of domestic violence are offered assistance by their employer as they take steps to live free from violence.

The Texas Council on Family Violence (TCFV) has suggested two rule changes that were communicated to DHS through TCFV committee reports. The department received comments from Aid to Victims of Domestic Abuse, National Training Center on Domestic and Sexual Violence, and The Women's Advocacy Project, Inc., regarding the proposed rules for special nonresidential projects. DHS reviewed 24 comments and as a result has revised 15 of the rules. A summary of the comments along with DHS's responses follows:

Shelter Centers

Comment: One committee comment recommended revising the following service definitions that are included in §54.101: counseling services, education arrangements for children, emergency medical care, emergency transportation, legal assistance, referral system to existing community services, and training and employment information.

Response: The definitions have been revised as recommended. The department believes the revisions will clarify services to be provided.

Comment: One comment recommended revising §54.521 as follows:

Confidentiality of Staff Records. Shelter Center must have written policies regarding:

(1) personnel information; and

(2) responses to requests made pursuant to the Texas Public Information Act.

Response: This rule has been revised as recommended.

Special Nonresidential Projects

Comment: There was a general comment concerning the introductory statement that there is no adverse effect on businesses because changes only affect nonprofit family violence organizations. There were three comments that the statement indicates that only current family violence contractors would be affected.

Response: The language should read: "There will be no adverse economic effect on large, small or micro businesses." It is our intention to include any eligible nonprofit organization providing family violence services and not to exclude new contractors.

Comments concerning §54.101(15): There were three comments that the definition of victim of family violence should be expanded or mirror the Family Code definition. The commenters explained that the current definition does not include victims of violence in dating relationships who have never lived together, violence between former household members, or violence between those who have never lived together but have a biological child together.

Response: This rule has not been revised. This rule reflects the definition of victim of family violence stated in Chapter 51 Human Resource Code, the statute that governs the DHS Family Violence Program. It would therefore be inappropriate for DHS to broaden the definition to include persons outside the household.

Comment concerning §54.101(15): One comment to asked why sexual abuse is differentiated from previously mentioned physical force and how "might also include" will be interpreted.

Response: Sexual abuse is differentiated because physical force may not be interpreted to include sexual abuse. The department believes those who are sexually/emotionally abused by batterers should be eligible for services; thus the sentence was added for clarification. DHS agrees that the language in the last sentence is unclear and is revising the last sentence of the rule to reflect this comment.

Comments concerning §54.1001(a): There were three comments that nonresidential special projects should not be mandated to have involvement or collaboration with the justice system, particularly if not relevant to the project or if it might discourage certain groups of people from participating in services.

Response: This rule has been revised to make it clear that collaboration with the justice system is not mandated; however, it is important that family violence contractors know how and when to contact law enforcement for safety purposes. Community resources will be further discussed in a management recommendation.

Comment concerning §54.1001(b): One comment asked why board minutes are required and whether information which is unrelated to the project must be included in board minutes.

Response: This rule has not been revised. Board minutes are relevant to demonstrate board accountability and the fulfillment of roles and responsibilities, and to document the existence of the corporation. It is important to note that the Texas Nonprofit Corporation Act requires corporations to keep minutes of the proceedings of their members and board of directors and committees having any authority of the board of directors (Tex.Civ.Stat. Art. 1396-2.23). DHS does not require a particular format for these minutes.

Comment concerning §54.1001(c): One comment asked that DHS define "on-site".

Response: This rule has not been revised. "On-site" means that the records are kept in the contractor's facilities. This is usually an administrative office or direct service facility.

Comment concerning §54.1005(d): One comment asked if it is necessary for DHS to have access to the organization's operating policies and procedures, personnel manual and files, and if the rule applies only to documents directly related to the special nonresidential project. The commenter suggested that this requirement may be cumbersome for small organizations.

Response: DHS requires access to the contractor's operating policies and procedures in order to ensure agency accountability and appropriate services for victims. These documents may also be used to monitor the contractor's performance. The rule has been revised to clarify that it applies only to documents related to the nonresidential special project.

Comment concerning §54.1005(e): One comment asked why it is necessary for the contractor to maintain a DHS *Family Violence Special Nonresidential Project Manual* and where the manual should be kept if services are being provided in a non-traditional social service setting.

Response: Maintenance of the DHS manual is necessary to ensure that staff has access to the minimum standards under which the funding was awarded. The manual should be kept in the direct service facility where services are performed. If a direct service facility is not available, the manual should be kept in the contractor's administrative office and be accessible to all staff

funded under the DHS Special Nonresidential Project. The language is revised to reflect this comment.

Comment concerning §54.1101(f): One comment stated that getting a fidelity bond may be difficult for a small organization and that redlining of service providers by insurers is common in some communities. The commenter suggested that since the contracts for special nonresidential projects are relatively small and are cost reimbursement contracts this requirement may not be necessary.

Response: This rule has been revised to reflect this comment. DHS believes that the points outlined above are legitimate and as a result §54.1101(f) has been deleted.

Comment concerning §54.1206: One comment stated that the initial training requirements are not appropriate and may be cumbersome for small organizations.

Response: This rule has not been revised. The initial training requirement applies only to positions funded by DHS and assures minimal training for each funded staff position. DHS believes the initial training requirements are appropriate and that they ensure/document minimal training for each funded staff position. It is important to clarify that this applies only to positions funded by DHS and that the format and length of the training are left to the discretion of each contractor.

Comment concerning §54.1207: One comment stated that the record retention requirements are not reasonable. The commenter asked if this rule applies to contract workers and staff files not directly related to the project.

Response: This rule has been revised to clarify that record retention requirements apply only to DHS funded positions.

It should also be noted that the federal OMB curricular A-110 Subpart C.53 requires that all records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report.

Comments concerning §54.1301(c): There were two comments that the proposed rule uses the language "If face-to-face services are offered" and that this language is contradictory to the requirement of providing core services.

Response: This rule has not been revised. The core services specified in §54.1501 must be available to eligible clients but are not mandated to be provided by the contractor for all clients; therefore the core services do not necessarily require face-to-face direct services. For example, if an organization is funded to conduct community presentations on domestic violence, it will not be required to provide core services to all audience members; however, if an audience member discloses domestic violence and requests the core services, the organization must provide those services to that individual.

Comments concerning §54.1302(a): There were three comments that this rule assumes the contractor is providing family violence services only. The commenter asked how this rule applies to an organization that serves other types of clients (which might include batterers) in addition to family violence clients.

Response: DHS agrees that safety and security procedures should be specific to each contractor since the contractor may serve non-family violence clients. The rule has been revised to reflect this comment. Other language contained in the original proposed rule will become a management recommendation.

Comment concerning §54.1302 and §54.1303: One comment was that reference is made to children's services yet the definition of family violence victim does not include children.

Response: This rule has not been revised. The DHS definition is based on Chapter 51 Human Resources Code which includes an individual who resides in the same household. Minors may be served independently of the adult victim, as described in §54.1402.

Comment concerning §54.1402: There was one comment that the rule refers to victims of family violence as defined in the DHS *Family Violence Special Nonresidential Project Manual* and goes on to describe services to minors, yet minors are not a part of the definition of family violence victim.

Response: This rule has not been revised. The DHS definition is based on Chapter 51 Human Resources Code which includes an individual who resides in the same household. Minors may be served independently of the adult victim, as described in §54.1402.

Comments concerning §54.1403: Two comments stated that the rule does not account for the fact that some persons receiving services are not considered formal clients. The commenters offered examples including clients served through school programs and women's meetings, etc. at which an intake form may not be completed.

Response: There may be projects related to group settings in which eligibility procedures may not apply. Therefore, depending on the type of project, DHS, with input from the contractor, will determine client eligibility procedures. The rule language is revised to reflect this comment.

Comments concerning §54.1403: There were three comments that subsection (a)(2) refers to the requirements as defined in the plan of operation if serving a specific underserved community, but (b)(1) is contradictory because it states "without regard to income." The commenter explains that this rule would preclude serving low-income people or welfare recipients.

Response: This rule has been revised. It is important to note that the federal Family Violence Prevention and Services Act under which these services are funded mandates that no income eligibility standard will be imposed on individuals receiving assistance or services supported with funds appropriated to carry out the Act (42 USCA 10402(d)). Subsection (a)(2) will be deleted to remove language that might be interpreted as contradictory. Remaining subsections of the rule (b) - (e) will be adopted as proposed.

Comments concerning §§54.1404 - 1414: There were three comments that these rules do not take different methods of service delivery into account but assume that formal, ongoing counseling services will be delivered by each special nonresidential project contractor.

Response: One rule in this section has been revised to clarify that the rule applies only to face-to-face services. The intent of these rules is not to mandate formal counseling services for each client, but to ensure confidentiality for all clients served. It is important to note that the Family Violence Prevention and Services Act requires DHS to provide a copy of the procedures developed and implemented that assure the confidentiality of records pertaining to any individual provided family violence prevention

or treatment services by any program assisted under the Act. §54.1404(b) and (c) are revised to reflect these comments.

Comment concerning §54.1410: One comment was that releases of information should not have ending dates. The commenter cites examples when this could cause problems, such as if staff is waiting on return phone calls and the release period ends or the client terminates services earlier than expected and the release is still active. The commenter suggested having no end date but giving the client the option to rescind the release at any time.

Response: The proposed rule will not be revised. DHS believes that it is not feasible to ask clients to be responsible for rescinding releases, and it could be dangerous for clients to have a release without an ending date. In order to ensure that the client's confidentiality is adequately protected, DHS believes that an ending date is necessary.

Comments concerning §54.1501(10): There were three comments that special nonresidential projects should not be mandated to provide core services. Commenters indicated the requirement of core services is cumbersome, makes the project comprehensive rather than specialized, may be costly, and does not allow for innovation and diversity of services.

Regarding subsection (b), one commenter suggested that the answering machine requirement is not reasonable.

Response: While DHS does not intend to limit specialization or innovation of services, DHS believes certain core services are needed to promote safety for family violence victims regardless of the type of special project. It is important to note that requirements regarding information may be met through brochures or other written materials. DHS has funded over 50 of these types of projects since 1997 and has not previously received feedback from contractors or potential contractors indicating that the core services were unreasonable.

Core services are required to be available at the request of a client; however, it is not mandated that the contractor provide each of these services for each client. This rule has been revised to explain that the access to a 24 hour hotline may be provided directly or through a formal written agreement with a DHS-approved entity.

Comment concerning §54.1501(c): One comment was that this rule may not be realistic for contractors if the staff/volunteer works only at specified times or if the family violence project is a relatively small part of the staff's or volunteer's responsibilities.

Response: As a result of the deletion of subsection (b), this rule is changed to §54.1501(b), however the rule language has not been revised. It is important to note that DHS is not mandating direct access when the staff or volunteer is away from the office. There should be a designated system in place for leaving messages during regular business hours if the staff or volunteer is not available. This clarification will be explained through a management recommendation.

Comment concerning §54.1501(d)(1): One comment requested that DHS explain the phrase, "Callers have access to immediate intervention 24 hours a day." The commenter suggested that this is not reasonable and limits which contractors can apply for the funding.

Response: As a result of the deletion of subsection (b), this rule is changed to §54.1501(c). The rule has been revised to reflect this comment.

Comments concerning §54.1502: Three comments stated that it is unreasonable to mandate this type of orientation, especially if the contractor only meets with a client once or twice. Commenters also suggested that an orientation of this detail may be confusing and intimidating for some clients.

Response: DHS believes that this information is necessary to protect the basic rights of clients. Contractors have sole discretion regarding the length and format (verbal or written) of the orientation. The rule has been revised to clarify that it applies only to contractors providing face-to-face direct services.

Comment concerning §54.1503: One comment indicated that termination procedures are not necessary. The commenter explained that if a client wants to terminate services, he/she will do so and that the proposed rule presumes ongoing services.

Response: This rule has been revised to clarify that it applies to ongoing services.

In addition, the department has initiated minor editorial changes to the text of §54.204(1)(O) by deleting the period and adding a semicolon and the word "and"; to §54.406 by changing "Title 51, Chapter 2" to read "Title 2, Chapter 51"; to §54.703(b) by changing "with DPRS" to read "with TDPRS"; to §54.703(c)(1) by adding a comma after "Title 2"; to §54.804(c)(3)(E) by adding the word "and"; to §54.1001(a) by changing "effectively the deliver" to read "effectively deliver the"; and to §54.1206(a)(11) by changing *"Family Violence Special Nonresidential Projects Manual"* to read *"Family Violence Special Nonresidential Project Provider Manual."* These changes are incorporated to clarify and improve the accuracy of the sections.

SUBCHAPTER A. DEFINITIONS

40 TAC §54.101

The amendments are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments implement the Human Resources Code, Chapter 51.

§54.101. Definitions.

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

(1) Civil justice system--A network of courts and legal processes that enforce, redress, or protect private rights.

(2) Community education--Heightening public awareness about family violence and the availability of services for victims of family violence.

(3) Cooperation with criminal justice officials--Making efforts on behalf of victims of family violence to:

(A) establish ongoing working relationships with the local criminal justice system, including but not limited to law enforcement, prosecutors, the courts, probation, and parole; and

(B) educate the local criminal justice system about family violence and the need for policies that ensure safety for victims of family violence and hold batterers accountable.

(4) Counseling services--Face-to-face intervention services for a resident or nonresident child/adult that provide safety planning, understanding and support, advocacy, case management, information and education, and resource assistance to victims of family violence.

(5) Criminal justice system--a network of court and legal processes that deal with penal law and its enforcement; an offense against the state.

(6) Crisis call hotline--A telephone number that is answered by trained shelter center volunteer(s), staff, or Texas Department of Human Services-approved services contractors who provide immediate intervention through safety planning (assess for danger); understanding and support; and information, education, and referrals to victims of family violence twenty-four hours a day, every day of the year.

(7) Education arrangements for children--Services that result in a resident or nonresident child being in compliance with the compulsory attendance requirements found in the education code. Examples include providing clothing or supplies for school and conferring with school teachers or administrators. It does not include transportation.

(8) Emergency medical care--Face-to-face assistance in responding to any urgent medical situation for the adult/child residents or nonresidents accessing shelter center services.

(9) Emergency transportation--Arranging transportation

(A) to and from emergency medical facilities for shelter residents and nonresidents, and/or

(B) from a safe place to the shelter for persons being considered for acceptance as residents of the shelter and who are located within the shelter's service area.

(10) Family violence special nonresidential project--A program that is established by a public or private nonprofit organization and provides at least one specialized family violence service as well as all required core services as described in the DHS *Family Violence Special Nonresidential Project Provider Manual*, Service Delivery section.

(11) Legal assistance--Providing services directly to the client that include assisting adult/child residents or nonresidents in safety planning, identifying individual legal needs; legal rights and options; and providing support and accompaniment in their pursuit of those options.

(12) Referral system to existing community services--Providing information and referring adult/child residents or nonresidents to existing community resources, including but not limited to medical care, legal assistance, Department of Protective and Regulatory Services, resource assistance, public assistance, counseling and treatment services, children's services, and other appropriate family violence services.

(13) Training and employment information--Providing information and referrals to adult/child residents or nonresidents about employment training and employment opportunities, either directly or through formal arrangements with other agencies.

(14) Twenty-four-hour-a-day shelter--A shelter that provides access, admittance, and temporary emergency shelter residence for victims of family violence twenty-four hours a day, every day of the year in a facility exclusively serving victims of family violence; a series of safe homes; or a designated section of another kind of emergency shelter. Motels may be used for overflow or in outlying counties but must not be used exclusively in place of one of the three types of shelters.

(15) Victim of family violence--An adult who is subjected to physical force or the threat of physical force by another who is related by affinity or consanguinity to that adult, who is a former spouse of that adult, or who resides in the same household with that adult; or an individual, other than an individual using physical force or the threat of physical force, who resides in the same household with a victim of family violence as defined above. Victims of family violence may also have been subjected to sexual and/or emotional abuse by their batterers.

(16) Volunteer recruitment and training program--A process for soliciting a diverse group of persons from the community and providing them with information about family violence and services for victims of family violence through a structured orientation in order to work as non-paid staff.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3765

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SUBCHAPTER B. BOARD OF DIRECTORS

40 TAC §§54.203 - 54.205

The amendments are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments implement the Human Resources Code, Chapter 51.

§54.204. Orientation.
New board members must:

(1) be provided a board handbook which will include at a minimum:

(A) board member job description;

(B) current list of board members with mailing addresses and telephone numbers;

(C) agency mission statement;

(D) agency bylaws and a copy of the letter granting 501(c) (3) status;

(E) committee list with assignments of all board members and staff;

(F) committee descriptions;

(G) policies of the agency;

(H) organizational chart;

(I) agency history;

(J) program services list;

(K) current budget, including funding sources and subcontractors;

(L) brief description of contract provisions with attorneys, auditors, or other professionals;

(M) basic information about family violence;

(N) brief history of the Texas battered women's movement; and

(O) brief summary of Texas laws that address family violence issues; and

(2) have access to a copy of the Texas Non-Profit Corporation Act; and

(3) have access to a copy of the Texas Department of Human Services Family Violence Program Provider Manual.

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 C. CONTRACT STANDARDS

40 TAC §§54.306, 54.308, 54.310 - 54.312

The amendments are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments implement the Human Resources Code, Chapter 51.

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SUBCHAPTER D. FISCAL MANAGEMENT

40 TAC §§54.402, 54.405 - 54.407, 54.409, 54.410, 54.414

The amendments and new section are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments and new section implement the Human Resources Code, Chapter 51.

§54.406. General Management and Overhead Costs.

General management and overhead costs such as salaries, rent, and electricity, must be allocated between funding sources if the shelter center provides services other than those mandated in the Human Resources Code, Title 2, Chapter 51.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §54.410

The repeal is adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The repeal implements the Human Resources Code, Chapter 51.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. SHELTER PERSONNEL

40 TAC §§54.502, 54.504, 54.505, 54.507, 54.519, 54.521, 54.526, 54.527

The amendments and new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments and new sections implement the Human Resources Code, Chapter 51.

§54.521. Confidentiality of Staff Records.

Shelter centers must have written policies regarding:

(1) personnel information; and

(2) responses to requests made pursuant to the Texas Public Information Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §54.526

The repeal is adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The repeal implements the Human Resources Code, Chapter 51.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. FACILITY SAFETY AND HEALTH

40 TAC §54.606

The amendment is adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendment implements the Human Resources Code, Chapter 51.

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SUBCHAPTER G. PROGRAM ADMINISTRATION

40 TAC §§54.703, 54.706, 54.707, 54.709, 54.710, 54.713, 54.718

The amendments are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments implement the Human Resources Code, Chapter 51.

§54.703. Client Eligibility and Minors.

(a) Shelter centers that are not licensed to provide residential child care must not provide 24-hour-a-day shelter to a person less than 18 years old unless that person is accompanied by a parent, legal guardian, is legally emancipated, or is a minor mother.

(b) The Texas Department of Protective and Regulatory Services (TDPRS) child care licensing. Shelter centers providing services to children and under the jurisdiction of the child care licensing regulations must have written policies and procedures ensuring compliance with TDPRS child care licensing rules and regulations.

(c) Services to minors when parent is not receiving services. Shelter centers providing nonresidential services to minors when the parent is not receiving services must ensure the

(1) minor self discloses that he/she resides in the same household with a victim of family violence as defined in the Human Resources Code (HRC), Title 2, Chapter 51; and

(2) shelter center has parental consent to provide the minor with nonresidential services; or

(3) shelter center complies with the Texas Family Code, Chapter 32.004, if parental consent is not obtained.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. SERVICE DELIVERY

40 TAC §§54.801, 54.804, 54.806, 54.808 - 54.811

The amendments are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The amendments implement the Human Resources Code, Chapter 51.

§54.804. Initial Delivery of Direct Services.

(a) Initial delivery of adult resident direct services. Shelter centers must:

(1) ensure and document that new adult residents have face-to-face contact with a staff person within 16 hours of the resident's admission.

(2) have written procedures ensuring that each adult resident is provided an orientation within 16 hours of the resident's arrival about shelter center services. The orientation must be documented and include but not be limited to:

(A) explanation of services available;

(B) cooperative living agreement, an agreement between the shelter and the residents promoting health, safety, and daily shelter operations;

(C) length of stay;

(D) termination policy;

(E) residents' rights;

(F) nondiscrimination statement;

(G) grievance procedures;

(H) safety and security procedures, including medication;

(I) confidentiality and limits of confidentiality, and

(J) waivers of liability.

(b) Initial delivery of adult nonresident direct services. Shelter centers must have written procedures ensuring that each adult nonresident is provided an orientation. The orientation must be documented and include but not be limited to:

(1) explanation of services available;

(2) termination policy;

(3) nonresidents' rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality; and

(8) waivers of liability.

(c) Initial delivery of children's direct services and designating an advocate. Shelter centers must

(1) have written procedures ensuring that new child residents and/or parent residents will have face-to-face contact with the designated children's staff. This service must be documented;

(2) designate at least one staff person, either paid or volunteer, to act as a children's advocate;

(3) document in writing that the designated staff acting as children's advocate has the following:

(A) knowledge of child development, parenting skills, and dynamics of family relationships;

(B) sensitivity to the needs of children;

(C) ability to respond in a constructive, supportive manner to the resident parent and child in crisis;

(D) ability to plan and implement activities for children; and

(E) knowledge of the local network of children's services; and

(4) have services available that are specific to meet the needs of children.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 7, 2000.

TRD-200005478
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
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Proposal publication date: February 25, 2000
For further information, please call: (512) 438-3765

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SUBCHAPTER I. BOARD OF DIRECTORS

40 TAC §§54.901 - 54.904

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. CONTRACT AND FISCAL STANDARDS

40 TAC §§54.1001 - 54.1008

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1001. Eligibility to Contract.

(a) To be eligible to apply for a contract, the applicant must be a public or private nonprofit organization. Funds will be awarded to organizations which best demonstrate the ability to effectively deliver the services outlined in the Request for Proposal published in the *Texas Register* and agree to comply with the criteria established in the *Family Violence Special Nonresidential Project Provider Manual*. The applicant will be required to demonstrate that services provided will meet a previously unmet need in the community. The special nonresidential project contractor must also demonstrate a system of referring victims of family violence, when appropriate, to at least one family violence shelter center. The special nonresidential project must provide DHS with evidence of ability to effectively utilize funds and community resources.

(b) The special nonresidential project contractor must maintain and provide to the Texas Department of Human Services, as requested, the following documentation:

(1) articles of incorporation;

(2) by-laws;

(3) tax exemption certification;

(4) board minutes;

(5) fiscal audits or financial statements;

(6) informational materials;

(7) case records, if applicable; and

(8) other relevant material.

(c) The documentation specified in subsection (b) of this section must be maintained by the special nonresidential project contractor in a readily accessible on-site location.

§54.1005. Contractor's Records.

(a) Contractors must allow the Texas Department of Human Services (DHS) and all appropriate federal and state agencies or their representatives to inspect, monitor, or evaluate client records, books, and supporting documents pertaining to services provided. Contractors and subcontractors must make documents available at reasonable times and for reasonable periods.

(b) Contractors must keep financial and supporting documents, statistical records, and any other records pertinent to the services for which a claim or cost report is submitted to DHS or its agent. The records and documents must be kept for a minimum of three years and 90 days after the end of the contract period. If any litigation, claims, or audit involving these records begins before the three-year period expires, the contractor must keep the records and documents for not less than three years and 90 days or until all litigation, claims, or audit findings are resolved.

(c) Each contractor must maintain the following DHS contract documents:

(1) a copy of the contract including approved budget and plan of operation;

(2) contract amendments, budget revisions, and other correspondence with DHS;

(3) copies of all monthly billing and client service forms and other DHS forms as required;

(4) copies of contractor's audit reports and related correspondence; and

(5) copies of DHS's monitoring and evaluation reports, documentation of corrective actions, and related correspondence.

(d) The special nonresidential project contractor must maintain the following documentation in a readily accessible location:

(1) the organization's operating policies and procedures related to the nonresidential special project;

(2) personnel manual and staff personnel files related to the nonresidential special project; and

(3) fiscal manual and accounting records that support DHS expenditures.

(e) The special nonresidential project contractor must maintain at least one copy of the DHS *Family Violence Special Nonresidential Project Provider Manual* at all separate locations where services are performed or administered. Contractors must ensure that:

(1) all staff and volunteers have access to the DHS *Family Violence Special Nonresidential Project Provider Manual*; and

(2) there are written procedures for the distribution and training of staff on manual revisions, policy interpretations, and the special nonresidential project contractor's operating policies and procedures.

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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Paul Leche
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SUBCHAPTER K. FISCAL MANAGEMENT

40 TAC §§54.1101 - 54.1114

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1101. Accounting System Requirements.

(a) Special nonresidential project contractors must maintain an accounting system which records revenues and expenditures using generally accepted accounting principles.

(b) Each special nonresidential project contractor must have a chart of accounts which lists all accounts by an assigned number.

(c) Accounting records include the general ledger and all subsidiary ledgers. Supporting documentation for all revenues and expenditures must be maintained for all expenditures charged to the Texas Department of Human Services (DHS) contract. Supporting documentation includes, but is not limited to:

(1) receipts or vouchers for revenues;

(2) bank statements;

(3) canceled checks;

(4) deposit slips;

(5) approved invoices;

(6) receipts;

(7) leases;

(8) contracts;

(9) time sheets;

(10) inventory; and

(11) cost allocation worksheets.

(d) Financial records must identify all funding sources and expenditures by separate fund type, for example, fund accounting.

(e) Special nonresidential project contractors must use a double entry accounting system. It can be cash, accrual, or modified accrual.

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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Paul Leche
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SUBCHAPTER L. PERSONNEL

40 TAC §§54.1201 - 54.1207

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1207. Record Retention.

All personnel documents, for positions funded by DHS, hiring information including applications, and all supervisory notes involving personnel decisions must be retained by the special nonresidential project contractor for three years and 90 days or until all litigation, claims, or audit findings are resolved, whichever is longer. Documents of contract workers must also be in compliance with record retention requirements.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 438-3765

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SUBCHAPTER M. FACILITY SAFETY AND HEALTH

40 TAC §§54.1301 - 54.1303

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1302. Safety and Security.

(a) Special nonresidential project contractors must have written policies and procedures to promote the safety and security of clients and staff as appropriate for the parameters of the special project.

(b) Special nonresidential project facilities must have all exits clearly marked with appropriate exit signs.

(c) Special nonresidential project contractors providing services to children must:

(1) develop and endorse written nonviolent disciplinary policies and procedures regarding child clients;

(2) comply with all applicable federal, state, and city regulations regarding smoking, including but not limited to the Pro-Children Act of 1994 and the Health and Safety Code, Chapter 161;

(3) ensure the safety of children in special nonresidential project facilities and maintain the safety of children if staff or volunteers take them on outings; and

(4) maintain a first aid kit in its facilities which is accessible to staff and volunteers.

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 N. PROGRAM ADMINISTRATION STANDARDS

40 TAC §§54.1401 - 54.1414

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1401. Client Eligibility State and Federal Laws.

(a) Eligible persons are victims of family violence as defined in the *Family Violence Special Nonresidential Project Provider Manual*.

(b) When determining client eligibility, special nonresidential project contractors must have written policies and procedures ensuring compliance with all federal and state laws including:

(1) Title VI of the Civil Rights Act of 1964 (Public Law 88-352);

(2) Section 504 of the Rehabilitation Act of 1973 (Public Law 93-112);

(3) the Americans with Disabilities Act of 1990 (Public Law 101-336); and

(4) the Age Discrimination Act.

(c) Special nonresidential project contractors must comply with all amendments to each, and all requirements imposed by the regulations issued pursuant to the acts listed in subsection (b) of this section.

(d) Special nonresidential project contractors must comply with Chapter 73 of the Human Resources Code (relating to Civil Rights).

(e) Special nonresidential project contractors must comply with the Texas Health and Safety Code, 85.113.

§54.1403. Client Eligibility Policies and Procedures.

(a) Special nonresidential project contractors may be required to have written client eligibility and screening procedures that are based on an individual's status as a victim of family violence.

(b) Special nonresidential project contractors must have written policies and procedures to ensure services to eligible victims of family violence:

(1) without regard to income; and

(2) who do not contribute, donate, or pay for these services.

(c) When determining client eligibility, special nonresidential project contractors must not discriminate based on gender and/or sexual orientation.

(d) Special nonresidential project contractors must have written procedures for access and delivery of services to non-English speaking persons and make every reasonable effort to serve non-English speaking persons.

(e) Special nonresidential project contractors must have written policies outlining behaviors that preclude otherwise eligible individuals from receiving special nonresidential project contractor services.

§54.1404. Confidentiality Policy and Procedures.

(a) Special nonresidential project contractors must have a written confidentiality policy which demonstrates that services will be delivered in a manner that ensures client confidentiality regarding records and information.

(b) If face-to-face direct services are provided, special nonresidential project contractors must fully inform clients in writing what information is recorded, why, and the methods of collection.

(c) If face-to-face direct services are provided, adult clients must be advised in writing of at least the following:

(1) their right to see their records;

(2) the special nonresidential project contractor's policy and practices on confidentiality;

(3) the current status of confidentiality laws in Texas, such as privileged communications and mandatory reporting for child, elder, and disabled abuse;

(4) what information is required to be reported and why, such as duty to warn and child abuse;

(5) the special nonresidential project contractor's policy for responding to court orders;

(6) the special nonresidential project contractor's policy for release of information;

(7) when the records will be decoded or destroyed; and

(8) what information will remain in the file once a client terminates services.

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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Paul Leche
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SUBCHAPTER O. SERVICE DELIVERY

40 TAC §§54.1501 - 54.1503

The new sections are adopted under the Human Resources Code, Title 2, Chapter 51, which provides the department with the authority to administer family violence programs.

The new sections implement the Human Resources Code, Chapter 51.

§54.1501. Required Core Services.

(a) Family violence special nonresidential project contractors at a minimum must offer and be able to provide the following services to eligible family violence clients:

(1) safety planning, including ongoing assessment of risk of violence and development of strategies to enhance safety, and appropriate family violence information regarding hotlines;

(2) information about the person's legal rights and options and referral to legal resources;

(3) information about the dynamics of family violence;

(4) information about and referral to existing community resources, including but not limited to medical care, legal assistance, Texas Department of Protective and Regulatory Services, public assistance, counseling and treatment services, children's services, and other appropriate family violence services. Special nonresidential project contractors must maintain and make readily accessible to staff and volunteers a current printed referral list including telephone numbers of existing community resources for each county where services are provided; and

(5) understanding and support of victims including active listening, addressing the needs identified by the individual, problem solving, and recognition that the victim is responsible for his/her own life decisions and the batterer is responsible for the violent behavior.

(b) Family violence special nonresidential project contractors must provide telephone access to family violence staff or volunteers during regular business hours.

(c) If hotline services are offered and funded by DHS, family violence special nonresidential project contractors must have written procedures assuring that:

(1) callers have access to a hotline 24 hours a day every day of the year. This service must be provided directly or may be provided through a formal written agreement with a DHS-approved entity.

(2) special nonresidential project contractors have written procedures to assess the victim's safety.

(3) if special nonresidential project contractors have an arrangement with a DHS-approved contract service, they have a written policy that addresses how the special nonresidential project will provide immediate access to 24-hour-a-day hotline crisis intervention.

(4) the hotline is answered 24 hours a day, every day of the year, by an individual trained in crisis intervention or who has immediate access to someone who has had this training. Blocks must be provided on agency numbers for outgoing calls to clients.

(5) the hotline number is listed in all local telephone books and widely distributed or available from local telephone information services within the special nonresidential project's service area.

(6) special nonresidential project contractors have a minimum of two telephone lines.

(7) special nonresidential project contractors do not use an answering machine to answer their hotline.

(8) special nonresidential project contractors have written procedures ensuring that collect calls from victims of family violence are accepted, and that there are no blocks on anonymous incoming calls.

(9) all hotline calls and any related documentation is kept confidential.

(10) if the hotline is used to screen for eligibility for services, the screening process complies with all state and federal laws.

(11) hearing-impaired victims of family violence have equal access to the crisis call hotline.

(12) special nonresidential project contractors have written procedures to respond to non-English speaking persons.

(13) if violent family members call the crisis call hotline, special nonresidential project contractors offer appropriate information and referral to battering intervention services.

(14) special nonresidential project contractors utilizing caller ID or any other technology that establishes a record of calls on the crisis call hotline develop written policies and procedures which:

(A) ensure there will not be a breach of confidentiality to third parties;

(B) limit access to the records generated by these devices; and

(C) ensure training to staff on all caller ID policies and procedures.

§54.1502. Initial Delivery of Direct Services.

Initial delivery of adult client direct services. Special nonresidential project contractors providing face-to-face direct services must have written procedures ensuring that each adult client is provided information to include but not be limited to:

(1) explanation of services available;

(2) termination policy;

(3) client rights;

(4) nondiscrimination statement;

(5) grievance procedures;

(6) safety and security procedures;

(7) confidentiality and limits of confidentiality; and

(8) waivers of liability (if applicable).

§54.1503. Voluntary and Involuntary Termination of Services.

(a) Special nonresidential project contractors providing ongoing face-to-face direct services must have written procedures for:

(1) voluntary and involuntary termination of services; and

(2) appealing terminations.

(b) Clients must be informed in writing of their right to appeal a termination of services. Notice to the client must be provided and a fair hearing conducted according to the Texas Department of Human Services (DHS) rules for fair hearings as specified in Chapter 79 of this title (relating to Legal Services).

(c) Special nonresidential project contractors must have written policies outlining behaviors for which services can be terminated. Threatening or inappropriate behaviors must be non-gender specific and must apply equally to all nonresidents.

(d) For clients for whom services were previously terminated and who are requesting services, nonresidential centers must have written procedures that take the victim's safety into consideration.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paul Leche
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For further information, please call: (512) 438-3765

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PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 362. DEFINITIONS

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §362.1, Definitions, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4505), and will not be republished. The amendment will add definitions for terms which are used in the rules, but which are not defined.

The definition of Health Care Condition as synonymous with Medical Condition will clear up confusion in terms.

No comments were received regarding these amendments.

The rule is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-200005356

John Maline
Executive Director
Texas Board of Occupational Therapy Examiners
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For further information, please call: (512) 305-3962

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CHAPTER 367. CONTINUING EDUCATION

40 TAC §367.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §367.1, Continuing Education, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4507), and will not be republished. With this rule there will be greater administrative efficiency and a reduction in confusion in reference to the random audit process. This amendment sets a time frame for retention of proof of continuing education documentation, and explains the audit, and the documentation required for the audit.

No comments were received regarding these amendments.

The rule is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Maline
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For further information, please call: (512) 305-3962

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CHAPTER 372. PROVISIONS OF SERVICES

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts amendments to §372.1, Provision of Services, without changes to the proposed text as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4507), and will not be republished. The amendment will clarify wording to reflect Legislative changes to the Act.

This amendment reflects changes, which allows OTRs and LOTs to accept referrals from all qualified health care providers.

No comments were received regarding these amendments.

The rule is adopted under the Occupational Therapy Practice Act, Title 3, Subchapter H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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John Maline
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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER K. CONTRACT NEGOTIATION, MEDIATION, AND OTHER ASSISTED NEGOTIATION OR MEDITATION PROCESSES

40 TAC §§800.451 - 800.456, 800.461 - 800.463, 800.471-800.473, 800.481, 800.482, 800.491, 800.492

The Texas Workforce Commission (Commission) adopts new Chapter 800, Subchapter K, §§800.451 - 800.456, 800.461 - 800.463, 800.471 - 800.473, 800.481, 800.482, 800.491, and 800.492 relating to Contract Negotiation, Mediation, and Other Assisted Negotiation and Mediation Processes. Section 800.452 is adopted with changes to the proposed text as published in the June 16, 2000, issue of the *Texas Register*(25 TexReg 5857). Sections 800.451, 800.453 - 800.456, 800.461 - 800.463, 800.471 - 800.473, 800.481, 800.482, 800.491 and 800.492 are adopted without changes and will not be republished.

Background and Purpose: House Bill 826, 76th Legislature, Regular Session (1999), as codified at Texas Government Code, Chapter 2260, and particularly §2260.052(c), requires that the Commission adopt rules to establish negotiation and mediation provisions relating to certain claims. Texas Government Code §2260.052(c) also directed the Office of the Attorney General (OAG) and the State Office of Administrative Hearings (SOAH) to provide model rules for negotiation and mediation that units of state government with rulemaking authority may voluntarily adopt or modify as they deem appropriate and that units of state government without rulemaking authority may use as a practice guide. The OAG proposed model rules on March 31, 2000, relating to procedures for the negotiation and mediation of certain breach of contract claims asserted by contractors against the State of Texas, and the adopted rules were published in the May 26, 2000, issue of the *Texas Register* (25 TexReg 4719). An interagency dispute resolution working group, co-sponsored by the OAG and the Center for Public Policy Dispute Resolution at the University of Texas at Austin School of Law and consisting of representatives of state agencies, legislative offices, institutions of higher education, and contractors and vendors who do business with the state, assisted the OAG and SOAH with the development of the model rules.

Staff of the Agency participated in the interagency dispute resolution working group. There are only a few modifications to the model rules that the Commission proposed and adopts.

No public comments were received during the comment period.

Two clerical corrections were made to §800.452(10). In the adopted rules contained in this publication, the term "Agency" refers to the daily operations of the Texas Workforce Commission under the direction of the executive director. The term "Commission" refers to the three-member body of governance composed of Governor-appointed members.

Specifically, the Commission adopts new Subchapter K, relating to Contract Negotiation, Mediation, and Other Assisted Negotiation and Mediation Processes.

The adopted rules describe an approach that builds upon existing and recommended provisions contained in contracts entered into by the Agency.

The new sections are adopted 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.

§800.452. Definitions.

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

(1) Claim--A demand for damages by the contractor based upon the Agency's alleged breach of the contract.

(2) Contract--A written contract between the Agency and a contractor by the terms of which the contractor agrees either:

(A) to provide goods or services, by sale or lease, to or for the Agency; or

(B) to perform a project as defined by Texas Government Code, §2166.001.

(3) Contractor--Independent contractor who has entered into a contract directly with the Agency. The term does not include:

(A) The contractor's subcontractor, officer, employee, agent or other person furnishing goods or services to a contractor;

(B) An employee of the Agency; or

(C) A student at an institution of higher education.

(4) Counterclaim--A demand by the Agency based upon the contractor's claim.

(5) Event--An act or omission or a series of acts or omissions giving rise to a claim, including but not limited to the following:

(A) for goods or services:

(i) the failure of the Agency to timely pay for goods and services;

(ii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the Agency for work not performed under the contract or in substantial compliance with the contract terms;

(iii) the suspension, cancellation, or termination of the contract;

(iv) final rejection of the goods or services tendered by the contractor, in whole or in part;

(v) repudiation of the entire contract prior to or at the outset of performance by the contractor; or

(vi) withholding liquidated damages from final payment to the contractor.

(B) for a project:

(i) the failure to timely pay the unpaid balance of the contract price following final acceptance of the project;

(ii) the failure to make timely progress payments required by the contract;

(iii) the failure to pay the balance due and owing on the contract price, including orders for additional work, after deducting any amount owed the Agency for work not performed under the contract or in substantial compliance with the contract terms;

(iv) the failure to grant time extensions to which the contractor is entitled under the terms of the contract;

(v) the failure to compensate the contractor for occurrences for which the contract provides a remedy;

(vi) suspension, cancellation or termination of the contract;

(vii) rejection by the Agency, in whole or in part, of the "work," as defined by the contract, tendered by the contractor;

(viii) repudiation of the entire contract prior to or at the outset of performance by the contractor;

(ix) withholding liquidated damages from final payment to the contractor; or

(x) refusal, in whole or in part, of a written request made by the contractor in strict accordance with the contract to adjust the contract price, the contract time, or the scope of work.

(6) Goods--Supplies, materials or equipment.

(7) Mediation--A consensual process in which an impartial third party, the mediator, facilitates communication between the parties to promote reconciliation, settlement, or understanding among them.

(8) Negotiation--A consensual bargaining process in which the parties attempt to resolve a claim and counterclaim.

(9) Parties--The contractor and the Agency that have entered into a contract in connection with which a claim of breach of contract has been filed under this chapter.

(10) Project--As defined in Texas Government Code §2166.001, a building construction project that is financed wholly or partly by a specific appropriation, bond issue or federal money, including the construction of:

(A) a building, structure, or appurtenant facility or utility, including the acquisition and installation of original equipment and original furnishing; and

(B) an addition to, or alteration, modification, rehabilitation, or repair of an existing building, structure, or appurtenant facility or utility.

(11) Services--The furnishing of skilled or unskilled labor or consulting or professional work, or a combination thereof, excluding the labor of an employee of the Agency.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 463-8812

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.

Agency Rule Review Plan

Texas Turnpike Authority Division of the Texas Department of Transportation

Title 43, Part 2

Filed: August 3, 2000

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Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 20, concerning Cotton Pest Control, 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), and readopts this chapter with the amendments, new section and repeal proposed in its notice of intent to review. The proposed notice of intent to review was published in the June 23, 2000, issue of the *Texas Register* (25 TexReg 6173)

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 proposed amendments to Title 4, Part 1,§20.1 and §20.22, new §20.23, and the repeal of §20.4. These proposals were also published in the June 23, 2000, issue of the *Texas Register*. No comments were received regarding the proposals or the department's notice of intent to review Chapter 20. The adopted amendments, new section and repeal may be found in the adopted rule section of this issue of the *Texas Register*.

The department has determined that in addition to adopting the above-referenced sections as proposed and the adopting the repeal of §20.4, the reason for readopting without changes all remaining sections in Title 4, Part 1, Chapter 20 continues to exist.

TRD-200005435

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: August 7, 2000

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The Texas Department of Agriculture (the department) adopts the review of Title 4, Texas Administrative Code, Part 1, Chapter 12, concerning Weights and Measures, Chapter 19, concerning Quarantines, and Chapter 22, relating to Nursery Products and Floral Items, pursuant to the Texas Government Code, §2001.039 and the General Appropriations Act, Article IX, §§9-10.13, 76th Legislature, 1999 (§§9-10.13) and readopts these chapters with the amendments noted in its proposed notice of intent to review. The proposed notice of intent to review was published in the June 30, 2000, issue of the *Texas Register* (25 TexReg 6391).

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.

The department adopted amendments to §19.62 and the repeal of §§12.2, 19.8, and 22.6. These adoptions were also published in the June 30, 2000, issue of the *Texas Register*. No comments were received on the department's notice of intent to review Chapters 12, 19, and 22.

The department has determined that the reason for readopting without changes all sections in Title 4, Part 1, Chapters 12, 19 and 22, including the recently adopted amendments to Chapter 19, continues to exist.

TRD-200005527

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: August 9, 2000

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General Land Office

Title 31, Part 1

In accordance with the General Appropriations Act, Article IX, §167, 75th Legislature (codified as §2001.039, Government Code) the General Land Office adopts the review of all rules under 31 TAC, Chapter 20 relating to Natural Resources Damage Assessment. Notice of the proposed review was published in February 2, 2000, edition of the *Texas Register* (25 TexReg 1155).

No proposed amendments, repeals, or new rules resulted from the review and the agency has determined that the initial reasons for adopting the rules contained within Chapter 20 continues to exist and are a valid exercise of the agency's authority.

The GLO received no comments regarding the review of the rules contained in Chapter 20.

TRD-200005525
Larry Soward
Chief Clerk
General Land Office
Filed: August 9, 2000

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Texas Military Facilities Commission

Title 37, Part 12

The Texas Military Facilities Commission (Commission) adopts the review of 37 TAC Chapter 375 pursuant to Texas Government Code, §2001.039. The Commission published notice of the review of this Chapter in the October 22, 1999, issue of the *Texas Register* (24 TexReg 9319).

No comments were received.

Texas Government Code, §435.013(a) designates the Commission as the "exclusive authority for the construction, repair, and maintenance of National Guard armories, facilities, and improvements owned by the state and located on commission property." The Chapter 375 rules describe the entire construction process beginning with project identification, proceeding through design, award, administration, completion, and ending with post-completion expectations.

The Chapter 375 rule is necessary to assign responsibility for all phases of construction projects, to minimize the likelihood of disputes, and to insure fairness in the construction bid and award process. Accordingly, the reasons for the rule continue to exist.

As part of the rule review process, the Commission proposes amendments to §§375.1-375.11. This proposal was filed concurrently with this notice and appears in the Proposed Rule section of this issue. This action completes the Commission's review of 37 TAC Chapter 375.

TRD-200005452
Jerry D. Malcolm
Executive Director
Texas Military Facilities Commission
Filed: August 7, 2000

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Texas Department of Public Safety

Title 37, Part 1

The Texas Department of Public Safety (DPS) has completed the review of Chapter 23 - Vehicle Inspection. Pursuant to the requirements of §167 of the Appropriations Act, the DPS readopts the following: Chapter 23: §§23.3-23.7, 23.9, 23.11-23.17, 23.21-23.25, 23.28, 23.29, 23.41, 23.42, 23.52, 23.53, 23.61, 23.71-23.79, 23.93, 23.94, 23.101, and 23.102.

The proposed review was published in the May 12, 2000, issue of the *Texas Register* (25 TexReg 4360).

The DPS received no comments as to whether the reason for adopting the rules continues to exist. The DPS finds that the reason for adopting these rules continues to exist.

As part of this review process, the DPS proposed amendments to the following sections as published in the May 19, 2000, issue of the *Texas Register* (25 TexReg 4496), §§23.1, 23.2, 23.8, 23.10, 23.26, 23.27, and 23.51.

The DPS received no comments on the proposed amendments. The DPS finds that the reason for adopting these rules continues to exist.

TRD-200005424
Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Filed: August 3, 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.

Figure: 1 TAC §64.11(b)

Years Providing Services	Percentage of State Support
First year	100%
Second year	90%
Third year	80%
Fourth year	70%
Fifth year	60%
Sixth year	50%
Seventh year and for each year thereafter*	50%

* After the end of the six-year period, the Office of the Attorney General shall not provide more than 50% of the funding for the local program for any subsequent year.

Figure: 4 TAC 35.61(b)(2)(A)

Test Results	Test Interpretation
1+1:10 or lower	Negative
2+1.10 through 2+ 1.20	Suspect
2+1.20 or higher	Reactor

Degree of fixation of complement: 1+ = 25%; 2+ = 50%; 3+ = 75%; 4+ = 100%

Figure: 4 TAC 35.61(b)(2)(B)

Manual CF Test

Code	Test Result	Code	Test Result
05	Neg @ 1:5	82	2+ @ 1:80
11	1+ @ 1:10	83	3+ @ 1:80
12	2+ @ 1:10	84	4+ @ 1:80
13	3+ @ 1:10	161	1+ @ 1:160
14	4+ @ 1:10	162	2+ @ 1:160
21	1+ @ 1:20	163	3+ @ 1:160
22	2+ @ 1:20	164	4+ @ 1:160
23	3+ @ 1:20	AC	Anticomplementary
24	4+ @ 1:20		
41	1+ @ 1:40		
42	2+ @ 1:40		
43	3+ @ 1:40		
44	4+ @ 1:40		
81	1+ @ 1:80		

Figure: 4 TAC 35.61(b)(3)

Interpretation of STT and SPT Results

Test Results			Test Interpretation
1:50	1:100	1:200	
-	-	-	Negative
I	-	-	Suspect
+	-	-	Suspect
+	I	-	Suspect
+	+	-	Reactor
+	+	I	Reactor
+	+	+	Reactor

(- equals No Agglutination; I equals Incomplete Agglutination; + equals Complete Agglutination)

Figure: 4 TAC 35.61(b)(4)

Test Results	Test Interpretation
S/N values greater than 0.6	Negative
S/N values less than or equal to 0.6 and greater than 0.3	Suspect
S/N values less than or equal to 0.3	Reactor

IN ADDITION

The ***Texas Register*** is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings, changes in interest rate and applications to install remote service units, and consultant proposal requests and awards.

To aid agencies in communicating information quickly and effectively, other information of general interest to the public is published as space allows.

Texas Department of Agriculture

Cotton Administrative Penalty Matrix

The Texas Agriculture Code (the "Code"), §12.020 confers administrative authority upon the department to assess administrative penalties against a person who violates provisions of Chapter 74 of the Code or a rule adopted pursuant to this chapter. The department has adopted this penalty guideline to ensure that its administrative enforcement actions are fair, uniform, consistent, and appropriate. The penalty guideline as published in the May 3, 1996, issue of the *Texas Register* (21 TexReg 3835) is being amended to ensure a more appropriate penalty based upon four factors.

The four factors considered when assessing administrative penalties are: (1) the fruiting status of the cotton plants; (2) the number of days the field has been out of compliance; (3) the number of acres out of compliance; and (4) the efforts of the cotton producer to comply with the destruction deadline. The factors were developed in accordance with the Code §12.020(d) and with consideration of the purpose and function of the cotton stalk destruction program. Since boll weevil and pink bollworm development occurs inside fruiting structures, the department considers a field that has cotton plants with fruiting structures to pose a greater hazard than plants that do not have fruiting structures. Additionally, the longer a field is left undestroyed and the more acres that are not in compliance, the greater the impact on the number of boll weevils and pink bollworms entering diapause. These insects represent a threat the following season, not only to the field out of compliance, but also to neighboring cotton fields.

COTTON PENALTY FORMULA.

In order to assess penalties for failure to destroy cotton stalks or other host plants by the appropriate destruction deadline, the following penalty formula will be used: Add the total number of acres out of compliance to the number of days the field has been out of compliance. Multiply the sum by a factor of $5.00 for cotton without fruiting structures or a factor of $7.50 for cotton with fruiting structures. Add the result to a base penalty of $250 per tract.

The calculation of the number of days a field is out of compliance will be based upon the status of the cotton plants (unharvested, standing stalks, shredded stalks, regrowth or volunteer) and the method of destruction required for the particular cotton stalk destruction zone as set out in 4 Texas Administrative Code §20.22. In zones with a destruction requirement of shredding **and** plowing, for regrowth, shredded stalks, standing stalks and unharvested cotton, days will be counted from the day following the destruction deadline. For volunteer cotton, days will be counted from the date of the initial department inspection documenting that the field has cotton in it. In zones with a destruction requirement of shredding **or** plowing, days will be counted from the day following the destruction deadline for standing stalks and unharvested cotton. For shredded stalks, regrowth and volunteer cotton, days will be counted from the date of initial department inspection documenting that the field has cotton in it.

To the extent that the cotton producer brings a portion of the total acreage into compliance after initial inspection, or if the cotton producer utilized a properly labeled herbicide to comply with destruction requirements, the department may reduce the penalty up to 50%.

The department may increase the penalty up to 50% for a history of violations of the cotton stalk destruction requirements. The department may also make additional adjustments in the penalty based upon extenuating circumstances as justice may require.

This penalty guideline is effective immediately upon publication in the *Texas Register*.

TRD-200005550
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 9, 2000

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TDA Organic Certification and Standards Materials List - Modification

The Texas Department of Agriculture (the department) under the authorization of the Texas Agriculture Code, Title 2, Chapter 12 §§12.002 and 12.016, and the Texas Organic Standards and Certification, Title 4, Texas Administrative Code, Chapter 18, § 18.12(b), published the Texas Department of Agriculture Organic Certification and Standards Materials List (TDA Materials List), a listing of materials categorized as allowed, allowed with restrictions, and prohibited for use in organic production and processing in the February 4, 2000, issue of

the *Texas Register*. The TDA Materials List currently states that sulfur must come from naturally mined sources. However, USDA and other organic certifiers allow elemental sulfur derived from petroleum and natural gas in addition to sulfur from naturally mined sources. The following modification to the listing for sulfur is being published by the department to eliminate this inconsistency with national organic industry standards.

SULFUR: (R) CROPS: Occurs naturally in elemental deposits and is purified from natural gas and petroleum. An acid-forming element essential to the growth of plants. May be used for correction of soil alkalinity and as a macronutrient where more buffered sources of sulfur are not appropriate. Also used as a fungicide for control of plant diseases such as brown rot, powdery mildew, and scab. Effective insecticide and miticide for control of such insects as thrips, mites and other rasping-sucking insects. Allowed for foliar use as an insecticide, fungicide or fertilizer. PROCESSING: Sulfur powder is prohibited for post- harvest treatment;

This change will prevent Texas organic producers from being at a disadvantage in relation to organic producers in other states. This change becomes effective immediately upon publication of the modification in the *Texas Register*. All other materials listed on the TDA Materials List remain unchanged.

TRD-200005551
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: August 9, 2000

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Office of the Attorney General

Notice of Consulting Service Contract

The Office of the Attorney General entered into a Consulting services contract with, Public Sector Personal Consulting, Inc., 4330 N. Civic Center Plaza, Suite 202, Scottsdale, Arizona 85251- 3350, to assist the Office of the Attorney General in preparing a model of internal and external salary parity ("Model"), along with associated support services, including but not limited to: training, tools, processes, procedures and data, that can be used by the OAG to attract and retain the most qualified attorney and non-attorney employees. Consultant will assist in achieving this outcome by studying, advising, recommending, designing, developing and implementing a useable, practical salary structure. The Consultant will recommend rates for competitive compensation and the fiscal impact of such recommendations for the various groups, categories or classifications of OAG employees. Also, the Consultant will study, advise, recommend, provide training, design and develop criteria and processes for equitable compensation. Finally, the Consultant will advise and assist the OAG with the implementation of the Model.

All documents, films, recordings, or reports that the consultant is required to present to the agency are due on or before February 28, 2001.

The total value of the contract is not to exceed $95,000 and the services will begin July 17, 2000, and the services will end no later than August 31, 2001.

For further information, please contact A.G. Younger at (512) 463-2110.

TRD-200005502
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 7, 2000

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Notice Regarding Private Real Property Rights Preservation Act (SB14) Guidelines

As part of the Private Real Property Rights Preservation Act enacted in 1995, the Legislature required the Office of the Attorney General to prepare Guidelines to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property. Those Guidelines were published in the *Texas Register* on January 12, 1996 (21 TexReg 387). The Act also requires the Attorney General to review the Guidelines at least annually and revise them as necessary "to ensure consistency with the actions of the legislature and the decisions of the United States Supreme Court and the supreme court of this state."[1] That review has been done annually as required.

This office published notice of its current annual review in the April 21, 2000, issue of the *Texas Register* (25 TexReg 3629), inviting comments or suggestions concerning the Guidelines.

No comments were received from governmental entities. An individual commented, requesting that the Guidelines clarify the rights of "coastal property owners." The purpose of the Guidelines is "to assist governmental entities in identifying and evaluating those governmental actions that might result in a taking of private real property."[2] The Guidelines are not designed to serve as a vehicle for furnishing legal advice to individuals.

Regarding the first formulation of a regulatory taking analysis, the Guidelines advised governmental entities to consider two factors: (1) "whether there is a 'nexus' between the proposed governmental action and the legitimate public interest purportedly furthered by the governmental action;" and (2) "whether there is 'rough proportionality' between the governmental action and the supposed interest furthered by the governmental action."[3]

In 1999 the United States Supreme Court announced that *Dolan's* "rough proportionality" test does not apply when the taking results from a denial of developmental approval, rather than exactions--land-use decisions conditioning the approval of development on the dedication of property to public use.[4] Therefore, when the subject of the regulatory taking analysis is the denial of developmental approval, the governmental entity need consider only (1) above. When the subject of the analysis is an exaction, both *Dolan* factors continue to apply.

Accordingly, §1.42 is revised to read as follows:

Section 1.42. With respect to the first formulation of the regulatory taking analysis, assuming a negative impact on a real estate property owner caused by a proposed governmental action to deny a development permit, it must be considered whether there is a "nexus" between the proposed governmental action and the legitimate public interest purportedly furthered by the governmental action.[5] If the proposed governmental action constitutes an exaction, it must additionally be considered whether there is "rough proportionality" between the governmental action and the supposed interest furthered by the governmental action.[6]

[1] Tex. Gov't Code Ann. §2007.041(c) (Vernon Pamphlet 2000).

[2] Tex. Gov't Code Ann. §2007.041(a) (Vernon Pamphlet 2000).

[3] Private Real Property Preservation Act Guidelines, § 1.42, 21 TexReg 388 (citing *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2317 (1994).

[4] *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 119 S.Ct. 1624, 1635 (1999).

[5] *Id.; see also Dolan*, 114 S.Ct. at 2317.

[6] *Dolan*, 114 S.Ct. at 2317.

For further information, please call A.G. Younger at (512) 463-2110.

TRD-200005433
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 4, 2000

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Texas Clean Air Act Enforcement Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under Texas Water Code §7.110. Before the State may settle a judicial enforcement action under the Texas Clean Air Act, 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. Duncan Thompson Petroleum, Inc., Kenneth Glass, Melvin Sharry, and Brooks Operating Company, Inc.*, Cause no. GV001864, in the 345th Judicial District Court of Travis County, Texas

Nature of Defendant's Operations: Defendants were owners and/or operators of petroleum storage tanks located at three facilities near the town of Smyrna in Cass County, Texas. Petroleum contamination from all three facilities had commingled, and on December 6, 1995, the Texas Natural Resource Conservation Commission (TNRCC) issued a cleanup Order jointly to the Defendants. The Attorney General filed suit to enforce the Order. The resulting Agreed Final Judgment orders Defendants to perform corrective action at the three facilities in conformance with the TNRCC rules on petroleum storage tanks located at 30 Texas Administrative Code (TAC) Chapter 334.

Proposed Agreed Judgment: The Agreed Final Judgment orders Defendants to perform corrective action at the three facilities in conformance with the TNRCC rules on petroleum storage tanks located at 30 Texas Administrative Code (TAC) Chapter 334, and to pay attorneys fees of $1,500.

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 Burgess Jackson, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

For further information, please call A.G. Younger at (512) 463-2110.

TRD-200005508
Susan D. Gusky
Assistant Attorney General
Office of the Attorney General
Filed: August 8, 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 July 27, 2000, through August 2, 2000:

FEDERAL AGENCY ACTIONS:

Applicant: Hard's Marine Service, LTD; Location: The project is located along the east shoreline of Old River, south of Interstate 10, east of Sheldon Road, Channelview, Harris County, Texas. Approximate UTM coordinates: Zone 15; Easting: 296850; Northing: 3295300. CCC Project No.: 00-0266-F1; Description of Proposed Action: The applicant proposes to construct a fleeting area to moor 35 to 40 barges. The project will entail erecting approximately 24 steel or wood 30-inch-diameter mooring pilings along about 2500 feet of the shoreline to accommodate up to 40 barges over the next 2 years. Type of Application: U.S.A.C.E. permit application #21991 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Davis Petroleum Corporation; Location: The project is located at State Tracts 139, 140, 141 (N/2), 148, 149, 150, 151, 152, 153, 162, 163, 164, 165, and 166, East Bay, Galveston County, Texas. Approximate UTM coordinates: Zone 15; Easting: 335000; Northing: 3267000. CCC Project No.: 00-0267-F1; Description of Proposed Action: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities. Such activities include installation of typical marine barges and keyways, shell and gravel pads, production structures with attendant facilities, and flowlines. Type of Application: U.S.A.C.E. permit application #22073 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: Reliant Energy, HL&P; Location: The project would traverse West Galveston Bay, between Virginia Point and 8 Mile Road, in Galveston, Galveston County, Texas. Approximate UTM coordinates: Zone 15; Easting: 315200; Northing: 3242500. CCC Project No.: 00-0268-F1; Description of Proposed Action: The applicant proposes to install by hydraulic jetting and trenching a 9-inch, 138kv, electrical transmission line. Hydraulic jetting, for 13,200 feet, would disturb approximately 1.91 acres of bay bottom. The area would be allowed to return to pre-construction contours by tidal movements and natural soil/water interactions. Trenching, with temporary sidecasting of trenched materials would disturb another 0.06 acre, 500 feet, of oyster reef containing bay bottom. This area would be returned to pre-construction contours by mechanical means. The applicant selected the route with minimal impact to oyster reefs. Type of Application: U.S.A.C.E. permit application #22066 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: George Buyajian; Location: The project is located at 1027 E. 6th Street, on Dickinson Bay, Galveston County, Texas. Approximate UTM coordinates: Zone 15; Easting: 313000; Northing: 3264400. CCC Project No.: 00-0269-F1; Description of Proposed Action: The applicant proposes to place 9 cubic yards of rip-rap in front of an existing bulkhead. Additionally, the applicant proposes to install a 500-foot long pier, which includes a 30-foot long by 4-foot wide T head. Type of Application: U.S.A.C.E. permit application #22037 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: Timothy DeSandro; Location: The project site is located on Galveston Bay, on the north side of the Texas City Dike, approximately 4.75 miles east of the landward end of the dike, in Texas City, Galveston County, Texas. CCC Project No.: 00-0270-F1; Description of Proposed Action: The applicant has revised project plans to relocate a proposed excursion vessel dock on the north side of the Texas City Dike. The applicant proposes to spud a 240-by 40-by 6-foot barge and 2, 40-by-7-by 5-foot pontoons, for use as a loading/unloading dock for an excursion vessel. The water depth at the waterward end of the dock structure will be approximately-7 to-8 feet mean low tide. No dredging or fill activities will be performed in association with the proposed project. The proposed work will not impact any wetlands or vegetated shallows. Type of Application: U.S.A.C.E. permit application #22005(Rev.) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Flamingo Isles, LLC; Location: The project site is a 187-acre tract of land located southwest of the Diversionary Canal and Galveston Bay intersection, southwest of Tiki Island in Hitchock, Galveston County, Texas. CCC Project No.: 00-0271-F1; Description of Proposed Action: The applicant proposes to fill 4.224 acres of interior brackish wetlands, 4.906 acres of smooth cord grass wetlands, and 0.419 acres of sand flats. In addition, 24.982 acres of deep water habitat will be filled. The applicant also proposes to dredge 0.159 acres of interior brackish wetlands, 4.104 acres of smooth cord grass wetlands, and 0.451 acres of sand flats. Furthermore, 44.197 acres of deep water habitat will be dredged. To compensate for the impacts to waters of the United States, including wetlands, the applicant proposes to create marsh, preserve wetlands, enhance on-site water quality, and plant live oak trees. The applicant will construct a 10-acre, on-site, smooth cord grass marsh using geo-tubes, rip-rap, and dredged material. In addition to the marsh creation, the applicant proposes to deed restrict a 185-acre area located on-site in the southwest section of the property. The applicant also proposes to include two modifications to the site development plan to enhance on-site water quality. The applicant proposes to redirect the effluent discharge into a 47.7-acre freshwater wetland located east of the proposed clubhouse. The applicant also proposes to install 22 interconnecting culverts, 24 inches in diameter, between canals. Finally, the applicant proposes to increase species diversity and avian nesting habitat in the general area by planting 20 mature, 3-inch diameter, live oak trees. Type of Application: U.S.A.C.E. permit application #22079 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: Michael Pugh; Location: The project is located north of the Highland Bayou Diversion Canal, on Flamingo Road, south of Texas City, in Galveston County, Texas. Approximate UTM coordinates: Zone 15; Easting: 307700; Northing: 324480. CCC Project No.: 00-0272-F1; Description of Proposed Action: The applicant proposes to excavate a 1,000-foot-long by 100-foot-wide by 10-foot-deep access channel connecting his private property to the Highland Bayou Diversion Canal. In addition, the applicant proposes to construct a 100-foot-long by 50-foot-wide by 10-foot-deep boat slip, located adjacent to the proposed channel. The applicant plans to construct a 560-square-foot boathouse within the proposed boat slip. Approximately 31,000 cubic yards of material will be mechanically excavated from uplands to create the channel and boat slip. No wetlands or vegetated shallows will be impacted by the proposed activity. Type of Application: U.S.A.C.E. permit application #21899 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Amerada Hess Corporation; Location: The project is located in the Gulf Safety Fairway crossing Garden Banks Area, Blocks 111 and 155, offshore Texas, Gulf of Mexico. CCC Project No.: 00-0273-F1; Description of Proposed Action: The applicant proposes to construct, maintain and operate duel 6-inch pipelines and an Electric/Hydraulic (E/H) umbilical from a subsea wellhead in Garden Banks block 200 to Platform 'A' in East Cameron Block 373. The pipelines and E/H umbilical will be laid on the natural bottom, which ranges in depth of 660 feet to 1170 feet deep. No dredging or trenching is planned. Type of Application: U.S.A.C.E. permit application #22114 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review. Further information for the applications listed above may be obtained from Ms. 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-200005526
Larry R. Soward
Chief Clerk, General Land Office
Coastal Coordination Council
Filed: August 9, 2000

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Comptroller of Public Accounts

Notice of Withdrawal

In accordance with Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) hereby withdraws the Request for Proposals (RFP) for consulting services to conduct a management and performance review of the Conroe Independent School District.

The notice of the RFP was published in the August 4, 2000, issue of the *Texas Register* (25Tex Reg 7369).

TRD-200005528
Pamela Ponder
General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 9, 2000

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Notice of Withdrawal

In accordance with Chapter 2254, Subchapter B, Texas Government Code, and Section 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) hereby withdraws the Request for Proposals (RFP) for consulting services to conduct a management and performance review of the North Forest Independent School District.

The notice of the RFP was published in the August 4, 2000, issue of the *Texas Register* (25Tex Reg 7368).

TRD-200005530
Pamela Ponder
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: August 9, 2000

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/14/00 - 08/20/00 is 18% for Consumer[1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.09 for the period of 08/14/00 - 08/20/00 is 18% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200005506
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 8, 2000

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Texas Education Agency

Request for Proposals Concerning Collecting, Analyzing and Reporting Information to the Texas Education Agency in Monitoring Publicly Funded Education Programs

Eligible Proposers. The Texas Education Agency (TEA) is requesting proposals under Request for Proposals (RFP) #701-00-048 from nonprofit organizations, institutions of higher education, private companies, and individuals. Historically underutilized businesses (HUBs) are encouraged to submit proposals.

Description. The TEA is requesting proposals for identifying and managing the collection, analysis, and reporting of information to TEA for its monitoring of local educational agencies to determine overall program quality and effectiveness. The purpose of this RFP is to solicit and ultimately select proposal(s) with regard to the identification, employment, and logistical support of contracted individuals to be utilized during the 2000-2001 school year. Approximately 195 educational entities are scheduled for on-site monitoring of their regular education and alternative education programs for this upcoming school year (2000-2001). The activities to be conducted by the contractors are detailed in the RFP.

Dates of Project. All services and activities related to the RFP will be conducted within specified dates. Proposers should plan for a starting date of no earlier than October 1, 2000, and an ending date of no later than May 30, 2001.

Project Amount. The proposer will make an offer based upon 195 sites to be visited and will be required to submit a detailed budget. The amount available for this contract is $665,055. This project is funded 100% from TEA funds.

Selection Criteria. Proposals will be selected based on the ability of each proposer to carry out all requirements contained in the RFP. The TEA will base its selection on, among other things, the demonstrated competence and qualifications of the proposer. The TEA reserves the right to select from the highest ranking proposals those that satisfy the requirements in the RFP.

The TEA is not obligated to execute a resulting contract, provide funds, or endorse any proposal submitted in response to this RFP. This RFP does not commit TEA to pay any costs incurred before a contract is executed. The issuance of this RFP does not obligate TEA to award a contract or pay any costs incurred in preparing a response.

Requesting the Proposal. A complete copy of RFP #701-00-048 may be obtained by writing the: Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tmail.tea.state.tx.us. Please refer to RFP number in your request.

Further Information. For clarifying information about the RFP, contact Roland Hernandez, Division of Accountability Development and Support, TEA, (512) 463-9716.

Deadline for Receipt of Proposals. Proposals must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), October 2, 2000, to be considered.

TRD-200005529
Criss Cloudt
Associate Commissioner, Policy Planning and Research
Texas Education Agency
Filed: August 9, 2000

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General Land Office

Notice of Invitation for Offers of Consulting Services

In accordance with Chapter 2254, Subchapter B, and §2254.029, Texas Government Code, the Texas General Land Office (GLO), Asset Management Division, announces this Notice of Invitation for Offers of Consulting Services to assist in the successful marketing and disposition of property owned by the Texas Department of Transportation in Ft. Bend County, Texas.

Description of Services. The services to be provided are as follows: the formulation and design of the business structure of the transaction, the design of bid packages, an evaluation of the impact on the value of the property in the event of annexation by the City of Sugar Land, and an evaluation of bids submitted for the purchase of the tracts.

Agency Contact. Requests for a copy of the Invitation for Offers should be directed to Jeff Boudreau, Land Development Manager, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495; by phone (512) 463-3294; by e-mail jamesbourdrea@glo.state.tx.us; or by fax (512) 463-9042.

Closing Date. The closing date for receipt of all offers is September 18, 2000, at 5:00 p.m. An original and 5 copies must be submitted. Delivery must be by mail or hand-delivery to Debby French, Director of Purchasing, Texas General Land Office, 1700 N. Congress, Room 810, Austin, Texas 78701-1495. Faxed offers will not be accepted.

Evaluation and Selection. The services requested will require extensive experience in the Houston real estate market. The successful bidder will possess specific knowledge and understanding of the Ft. Bend County real estate market and will be required to demonstrate experience in the following areas: Land Development/Land Use, specifically: Residential land uses, including single- and multi-family development, dispersed price points, mixed densities and prices within single developments; commercial land development analysis, including retail, office and industrial uses; master-planned communities and other mixed-use projects in the Sugar Land/Ft. Bend County area; conceptual land use analysis of large acreage properties for owners and potential investors/buyers; and special land use evaluations, including golf courses, parks and other special purpose uses.

Specific Work Experience: Land use studies, including current analyses, short- and long-term projections of future land development concentrations, area economic and demographic projections and absorption estimates, land use restrictions, and environmental impacts on developability; market feasibility analyses based on current and projected long-term market conditions for each land use type individually and for mixed-use developments; financial feasibility analyses including project financing, public-private joint efforts and financing and long-term project financial models which include all capital and operating costs with estimates of revenues and reversion values that indicate annual and overall project financial performance; general consulting services for property owners as well as property buyers, investors and developers.

Given the size and potential complexity of this project, the successful bidder should possess sufficient resources and financial strength to ensure its complete objectivity and independence in developing its analysis and providing its opinions and conclusions.

The General Land Office will assemble an Evaluation Committee to review, evaluate and rank offers. No information will be provided as to the status of offers while offers are being evaluated. All offers will be evaluated based on the criteria listed above.

TRD-200005507
Larry R. Soward
Chief Clerk
General Land Office
Filed: August 8, 2000

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Texas Department of Health

Licensing Action for Radioactive Materials

The Texas Department of Health has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout Texas" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Amarillo	Baptist St Anthonys Health System	L01259	Amarillo	59	7/24/00
Aransas Pass	Global X-Ray & Testing Corp	L03663	Aransas Pass	86	7/20/00
Arlington	RCOA Imaging Services Inc	L05329	Arlington	01	7/19/00
Arlington	Columbia Medical Center of Arlington Subsidiary	L02228	Arlington	49	07/28/00
Baytown	San Jacinto Methodist Hospital	L02388	Baytown	36	7/18/00
Big Springs	Scenic Mountain Medical Center	L00763	Big Springs	35	7/26/00
Brownwood	Brownwood Regional Medical Center	L02322	Brownwood	45	7/27/00
Cedar Creek	Biocrest Manufacturing	L05214	Cedar Creek	03	7/13/00
Corpus Christi	Rock Engineering and Testing Laboratory Inc	L05168	Corpus Christi	02	7/20/00
Corpus Christi	Spohn Hospital	L02495	Corpus Christi	61	7/18/00
Corpus Christi	Driscoll Childrens Hospital	L04606	Corpus Christi	18	7/25/00
Dallas	Betagene Inc	L04801	Dallas	04	7/26/00
Dallas	Mallinckrodt Inc	L03580	Dallas	38	07/31/00
Dallas	Animal Radiology Clinic	L03535	Dallas	16	07/27/00
Dallas	Raytheon Company	L04096	Dallas	19	07/27/00
Denton	International Isotopes Inc	L05159	Denton	12	7/27/00
Dumas	Memorial Hospital	L03540	Dumas	14	7/27/00
El Paso	Providence Memorial Hospital	L02353	El Paso	64	07/28/00
Fort Worth	Freese and Nichols Inc	L04301	Fort Worth	06	7/18/00
Fort Worth	Computalog Wireline products Inc	L00747	Fort Worth	59	7/25/00
Galveston	The University of Texas Medical Branch	L01299	Galveston	56	7/18/00
Houston	Baker Hughes Inteq	L04452	Houston	29	7/12/00
Houston	Tenet Healthcare Ltd	L02432	Houston	28	7/18/00
Houston	Advanced Cardiac Care Association	L04936	Houston	12	7/19/00
Houston	Positron Corporation	L03806	Houston	20	7/18/00
Houston	Richmond Imaging Affiliates LTD	L04342	Houston	35	7/19/00
Houston	Rice University Department of Biochemistry and	L01772	Houston	16	7/18/00
Houston	The Methodist Hospital Department of Radiation	L00457	Houston	95	7/26/00
Houston	Heard & Katz Engineering Services	L05049	Houston	05	7/28/00
Houston	CHCA West Houston LP	L02224	Houston	50	7/24/00
Houston	Professional Service Industries Inc	L03642	Houston	19	07/21/00
Houston	CHCA West Houston LP	L02224	Houston	51	07/27/00
Houston	Memorial Cardiology Associates PA	L05349	Houston	01	07/27/00
Laredo	Mercy Hospital of Laredo	L05305	Laredo	01	7/25/00
Lewisville	Columbia Medical Center of Lewisville Subsidiary	L02739	Lewisville	26	7/18/00
Lubbock	Covenant Health System	L04881	Lubbock	17	7/19/00
Lubbock	University Medical Center	L04719	Lubbock	33	7/18/00
Lubbock	University Medical Center	L04719	Lubbock	34	07/28/00
Lufkin	Piney Woods Healthcare System LLC	L01842	Lufkin	37	7/17/00
Marshall	Harrison County Hospital Association	L02572	Marshall	16	7/18/00
McAllen	McAllen Heart Hospital	L04902	McAllen	05	7/19/00
McAllen	McAllen Edinburg LP	L01713	McAllen	59	7/27/00

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
McAllen	McAllen Heart Hospital	L04902	McAllen	06	7/27/00
Mesquite	Mesquite Community Hospital LP	L02733	Mesquite	29	07/28/00
Midland	Memorial Hospital and Medical Center	L00728	Midland	64	7/25/00
Midland	Midland Walk In and Cardiology Clinic	L05239	Midland	03	07/17/00
Orange	Ausimont USA Incorporated	L03968	Orange	09	7/21/00
Pasadena	CHCA Bayshore LP	L00153	Pasadena	69	7/19/00
Pasadena	Conam Inspection	L05010	Pasadena	28	7/20/00
Plano	Presbyterian Hospital of Plano	L04467	Plano	18	07/28/00
San Angelo	Ethicon Inc	L00720	San Angelo	47	07/27/00
San Antonio	Methodist Healthcare System of San Antonio	L00594	San Antonio	147	7/10/00
San Antonio	Baptist Imaging Center	L04506	San Antonio	19	7/18/00
San Antonio	Bionumerik Pharmaceuticals Inc	L05226	San Antonio	02	7/20/00
San Antonio	Radiology Associates of San Antonio PA	L05358	San Antonio	01	7/26/00
San Antonio	San Antonio River Authority	L02706	San Antonio	08	7/28/00
San Antonio	Diabetes and Glandular Disease Clinic PA	L02647	San Antonio	17	7/24/00
San Antonio	South Texas Cardiovascular Consultants PLLC	L03833	San Antonio	19	07/28/00
San Antonio	Santa Rosa Health Care	L02237	San Antonio	59	07/27/00
San Antonio	CTRC Research Foundation	L03350	San Antonio	26	07/28/00
Tahoka	Lynn County Hospital District	L03383	Tahoka	13	7/18/00
Temple	Specialty Pharmacy Services Inc	L04883	Temple	13	07/31/00
Texas City	Union Carbide Chemicals and Plastics Company	L00495	Texas City	49	07/18/00
Throughout TX	Mobil Oil Corporation	L00603	Beaumont	62	7/18/00
Throughout TX	Protechnics Division of Core Laboratories Inc	L03835	Houston	37	7/24/00
Throughout TX	Terracon Inc	L05268	Dallas	03	7/19/00
Throughout TX	Computalog Wireline Services Inc	L04286	Fort Worth	37	7/25/00
Throughout TX	X-Ray Inspection Inc	L05275	Beaumont	04	7/27/00
Throughout Tx	Halliburton Energy Services Inc	L00442	Houston	97	7/26/00
Throughout TX	Halliburton Energy Services Inc	L00442	Houston	96	7/18/00
Throughout TX	Non Destructive Inspection Corporation	L02712	Lake Jackson	77	7/25/00
Throughout TX	Applied Standards Inspection Inc	L03072	Beaumont	64	07/24/00
Throughout TX	Zachry Construction Corporation	L05230	San Antonio	01	07/24/00
Throughout TX	Protechnics Environmental Division of Core Lab	L04477	Houston	11	07/24/00
Throughout TX	Atser Corporation	L04741	Houston	14	07/25/00
Throughout TX	Metco	L03018	Houston	99	07/18/00
Throughout TX	Real Inspection Training Engineering	L05136	Houston	01	08/01/00

CONTINUED AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Throughout TX	Petroleum Industry Inspectors	L04081	Houston	71	7/31/00
Throughout TX	City of Killeen	L04668	Killeen	04	7/28/00
Throughout TX	Industrial Fabricators Inc	L04935	Texas City	12	7/28/00
Throughout TX	Superior Testing Services	L05145	Pasadena	11	07/26/00
Tyler	The University of Texas Health Center at Tyler	L04117	Tyler	24	07/28/00
Wadsworth	STP Nuclear Operating Company	L04222	Wadsworth	13	7/26/00
Wichita Falls	United Regional Health Care System Inc	L00350	Wichita Falls	75	07/31/00

RENEWALS OF EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Muenster	Muenster Hospital District	L04887	Muenster	04	07/19/00
Dallas	Presbyterian Hospital of Dallas	L01586	Dallas	74	07/25/00
Houston	Simpro Inc	L04419	Houston	07	07/28/00
Throughout TX	Qualitex Industrial X-Ray Inc	L04079	Odessa	13	07/26/00
Roanoke	Sunmount Corporation	L03799	Roanoke	12	07/28/00
Dallas	Texas Oncology PA	L04878	Dallas	15	07/28/00
Dallas	Columbia Hospital at Medical Dallas Subsidiary	L01976	Dallas	125	07/31/00

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Fort Worth	Maxum Health Services Corp	L03807	Fort Worth	19	07/19/00
Rio Grande City	Starr Regional Imaging Center LLC	L04928	Rio Grande City	04	07/19/00
Angleton	Dabaghi & Hanna LLP	L05316	Angleton	04	07/11/00
Houston	Houston Eye Clinic	L04303	Houston	02	07/27/00
Austin	Raytheon Company	L03838	Austin	12	07/28/00

LICENSES EXCEPTION ISSUED:

Location	Name	License #	City	Amend -ment #	Date of Action
Houston	Independent Testing Laboratories	L03795	Houston		07/10/00

In issuing new licenses and amending and renewing existing licenses, the Texas Department of Health, Bureau of Radiation Control, has determined that the applicants are qualified by reason of training and experience to use the material in question for the purposes requested in accordance with Title 25 Texas Administrative Code (TAC) Chapter 289 in such a manner as to minimize danger to public health and safety or property and the environment; the applicants' proposed equipment, facilities and procedures are adequate to minimize danger to public health and safety or property and the environment; the issuance of the

license(s) will not be inimical to the health and safety of the public or the environment; and the applicants satisfy any applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a licensee, applicant, or "person affected" within 30 days of the date of publication of this notice. A "person affected" is defined as a person who is a resident of a county, or a county adjacent to the county, in which the radioactive materials are or will be located, including any person who is doing business or who has a legal interest in land in the county or adjacent county, and any local government in the county; and who can demonstrate that he has suffered or will suffer actual injury or economic damage. A licensee, applicant, or "person affected" may request a hearing by writing Richard A. Ratliff, P.E., Chief, Bureau of Radiation Control (Director, Radiation Control Program), Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756-3189. For information call (512) 834-6688.

TRD-200005524
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: August 9, 2000

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Texas Department of Housing and Community Affairs

Multifamily Housing Revenue Bonds (Ash Creek Apartments) Series 2000

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at Casa View Branch Library, 10355 Ferguson Road, Dallas, Texas 75228, at 6:00 p.m. on Wednesday, September 6, 2000, with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $17,500,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to a nonprofit subordinate of The American Opportunity Foundation, Inc., a nonprofit corporation (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the acquisition, construction and equipping of a multifamily housing project (the "Project") described as follows: 280 unit multifamily residential rental development to be constructed on approximately 17.034 acres of land located at 2653 John West Road, in Dallas, Dallas County, Texas 75228. The Project will be owned and operated by the Borrower or a related entity. The Project will be managed initially by Capstone Real Estate Services, Inc.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Stephen Apple, at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3357.

Persons who intend to appear at the hearing and express their views are invited to contact Stephen Apple, in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Stephen Apple, prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, at least two days before the meeting so that appropriate arrangements can be made.

http://www.tdhca.state.tx.us/hf.htm

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez, at (512) 475-3757, at least five days before the meeting so that appropriate arrangements can be made.

TRD-200005522
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 9, 2000

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Multifamily Housing Revenue Bonds (Highland Meadow Village Apartments) Series 2000 (Amended Notice of Public Hearing)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department"), formerly scheduled for August 24, 2000, at 6:00 p.m. at Parker Williams Branch Library, is now scheduled for 6:00 p.m. on Wednesday, August 30, 2000, at Parker Williams Branch Library, 10851 Scarsdale Boulevard, in Houston, Texas 77089, with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $12,750,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to TCR Highland Meadow Limited Partnership (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the acquisition, construction and equipping of a multifamily housing project (the "Project") described as follows: 250 unit multifamily residential rental development to be constructed on approximately 15.98 acres of land located at the 10900 Block of Highland Meadow Village Drive, Houston, Texas 77089. Highland Meadow Village Drive is approximately 1 mile north of the Intersection of Scarsdale Boulevard and Beamer Road, south of Beltway 8 and Interstate 45. The Project will be owned and operated by TCR Highland Meadow Limited Partnership. The Project will be managed by Trammell Crow Residential Services.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion, at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion, in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion, prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, at least two days before the meeting so that appropriate arrangements can be made.

p://www.tdhca.state.tx.us/hf.htm

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez, at (512) 475-3757, at least five days before the meeting so that appropriate arrangements can be made.

TRD-200005520
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 9, 2000

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Multifamily Housing Revenue Bonds (Williams Run Apartments) Series 2000

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Department") at Samuel Grand Recreation Center, 6200 Grand Avenue, Dallas, Texas 75223, at 6:00 p.m. on September 7, 2000, with respect to an issue of tax-exempt multifamily residential rental project revenue bonds in the aggregate principal amount not to exceed $12,790,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Texas Department of Housing and Community Affairs (the "Issuer"). The proceeds of the Bonds will be loaned to Green Bridge Development Corporation, a Texas nonprofit corporation (or a related person or affiliate thereof) (the "Borrower"), to finance a portion of the acquisition, renovation and equipping of a multifamily housing project (the "Project") described as follows: 252 unit multifamily residential rental development constructed on approximately 6.83 acres of land located at 7440 La Vista Drive, in Dallas, Dallas County, Texas 75214. The Project will be owned and operated by Green Bridge Development Corporation or a related entity. The Project will be managed by REOC Property Services, LLC.

All interested parties are invited to attend such public hearing to express their views with respect to the Project and the issuance of the Bonds. Questions or requests for additional information may be directed to Robert Onion, at the Texas Department of Housing and Community Affairs, 507 Sabine, Austin, Texas 78701; (512) 475-3872.

Persons who intend to appear at the hearing and express their views are invited to contact Robert Onion, in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Robert Onion, prior to the date scheduled for the hearing.

Individuals who require auxiliary aids in order to attend this meeting should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943, or Relay Texas at 1-800-735-2989, at least two days before the meeting so that appropriate arrangements can be made.

http://www.tdhca.state.tx.us/hf.htm

Individuals who require child care to be provided at this meeting should contact Dina Gonzalez, at (512) 475-3757, at least five days before the meeting so that appropriate arrangements can be made.

TRD-200005521
Daisy A. Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 9, 2000

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Notice of Administrative Hearing

Manufactured Housing Division

Wednesday, August 23, 2000, 1:00 p.m.

State Office of Administrative Hearing, Stephen F. Austin Building, 1700 N Congress, 11th Floor, Suite 1100

Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Texas Department of Housing and Community Affairs vs. David Junell dba A & M Mobile Home Service to hear alleged violations of Sections 7(d)(e)(f) and 13(f) of the Act and Section 80.123(e)(1) of the Rules regarding installation of a manufactured home without obtaining, maintaining or possessing a valid installer's license, not applying for an installer's license and not obtaining the required bond prior to entering into an agreement to install a used manufactured home. SOAH 332-00-1838. Department MHD1999001903UI.

Contact: Jerry Schroeder, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3589.

TRD-200005552
Daisy Stiner
Executive Director
Texas Department of Housing and Community Affairs
Filed: August 9, 2000

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Texas Department of Human Services

Open Solicitation #2 for Parmer County

Pursuant to Title 2, Chapters 22 and 32, of the Human Resources Code and 40 TAC §19.2324, the Texas Department of Human Services (TDHS) is announcing an open solicitation period of 30 days (starting the date of this public notice) for the construction of a 90-bed nursing facility in **Parmer County, County # 185**, identified in the **June 9, 2000**, issue of the *Texas Register* (**25 TexReg 5733**). Medicaid contracted nursing facility occupancy rates in Parmer County exceed the threshold (90% occupancy) in each of six months in the continuous period of **July 1999 through December 1999**. The county occupancy rates for each month of that period were: **93.1%, 91.5%, 91.7%, 94.7%, 94.0%, 94.3%**. Potential contractors seeking to construct a 90- bed nursing facility in a high-occupancy area must demonstrate a history of quality care, as specified in §19.2322(d) of this title (relating to Allocation, Reallocation and Decertification Requirements). This rule does not eliminate a new potential Nursing Facility Operator (NFO) who has no history of providing care. The NFO must submit a written reply (as described in 40 TAC §19.2324) to TDHS, Joe D. Armstrong, Facility Enrollment Section, Long Term Care-Regulatory, Mail Code (E-342), P.O. Box 149030, Austin, Texas 78714-9030. The written reply must be received by TDHS before the close of business September 18, 2000, the published ending date of the open solicitation period. Potential contractors who reply as specified above will be allowed 90 days to qualify. To qualify, potential contractors must demonstrate an intent and ability to begin construction of a facility and complete contracting within specified time frames. They must submit a letter of application to TDHS with the following documentation: First, there must be acceptable written documentation showing the ownership of or an option to buy the land on which the proposed facility is or will be located. Second, documentation must include a letter of finance from a financial institution. Third, documentation must include a signed agreement stating that, if selected, the potential contractor will pay liquidated damages if either the 12-month and/or the 24-month deadline(s) described in 40 TAC §19.2324(10) are not met. The signed agreement must also require the potential contractor to provide, within 10 working days after the date of selection, a surety bond or other financial guarantee acceptable to TDHS ensuring payment in the event of default. If the 12-month deadline is not met, liquidated damages are 5% of the estimated total cost of the proposed or completed facility. If the 24- month deadline is not met, liquidated damages are an additional 5% of the estimated total cost of the proposed or completed facility. If two or more potential contractors become eligible to be qualified during the open solicitation period, there will be a lottery selection. Each application must be complete at the time of its receipt. If no potential contractors submit replies during

this open solicitation period, TDHS will place another public notice in the *Texas Register* announcing the reopening of the open solicitation period until a potential contractor replies.

TRD-200005523
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: August 9, 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 CHATHAM REINSURANCE CORPORATION to MAPFRE REINSURANCE CORPORATION, a foreign fire and casualty company. The home office is in San Francisco, California.

Application to change the name of PARTNERRE LIFE INSURANCE COMPANY OF THE U.S. to SCOR LIFE U.S. RE INSURANCE COMPANY, a domestic life company. The home office is in Dallas, Texas.

Application to change the name of WHITE MOUNTAINS INSURANCE COMPANY to MOUNTAIN VALLEY INDEMNITY COMPANY, a foreign fire and casualty company. The home office is in Manchester, New Hampshire.

Application to change the name of HARBOURTON REASSURANCE, INC. to SCOTTISH RE (U.S.), INC., a foreign life company. The home office is in Wilmington, Delaware.

Application for admission to the State of Texas by ARAG INSURANCE COMPANY, a foreign prepaid legal company. The home office is in Des Moines, Iowa.

Any objections must be filed with the Texas Department of Insurance, addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, M/C 305-2C, Austin, Texas 78701. I

TRD-200005531
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 9, 2000

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Notice

On August 7, 2000, in order number 00-0939, the Commissioner of Insurance adopted amendments to the Texas Automobile Insurance Plan Association, Plan of Operation.

For copies of Commissioner's order number 00-0939 and the amendments to the Texas Automobile Insurance Association Plan of Operation, contact Sylvia Gutierrez at (512) 463-6327 (refer to file number A-0600-14).

TRD-200005516
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 8, 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 admission to Texas of Doral Therapy Services, LLC, a foreign third party administrator. The home office is Mequon, Wisconsin.

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-200005517
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 8, 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 admission to Texas of Workup, LLC, a foreign third party administrator. The home office is Portland, Maine.

Application for incorporation in Texas of Frontier General Insurance Agency, Inc., a domestic third party administrator. The home office is Fort Worth, Texas.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Charles M. Waits, MC 107-5A, 333 Guadalupe, Austin, Texas 78714-9104.

TRD-200005518
Judy Woolley
Deputy Chief Clerk
Texas Department of Insurance
Filed: August 8, 2000

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Texas Natural Resource Conservation Commission

Invitation to Comment

The Texas Natural Resource Conservation Commission (TNRCC or commission) announces the availability of the draft July 2000 Update to the Water Quality Management Plan for the State of Texas.

The Water Quality Management Plan (WQMP) is developed and promulgated pursuant to the requirements of the Federal Clean Water Act (CWA), §208. The draft July 2000 WQMP Update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission or executive director certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft July 2000 WQMP Update also contains service area populations for listed wastewater treatment facilities, and documentation of Designated Management Agency resolutions.

A copy of the draft July 2000 Update may be found on the TNRCC's web page, the web address is http://www.tnrcc.state.tx.us/water/quality/wqmp. A copy of the draft may also be viewed at the TNRCC Library located at the Texas Natural Resource Conservation Commission, Building A, 12100 Park 35 Circle, North Interstate 35, Austin, Texas.

Written comments on the draft July 2000 Update to the Water Quality Management Plan shall be submitted to Ms. Suzanne Vargas, Texas Natural Resource Conservation Commission, Water Permits and Resource Management Division, MC-150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 18, 2000. For further information or questions, please contact Ms. Vargas at (512) 239-4619 or by e-mail at svargas@tnrcc.state.tx.us.

TRD-200005519
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: August 9, 2000

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Notice of Water Rights Application

Notice is given that SABINE MINING COMPANY, 6501 Farm Road 968 West, Hallsville, Texas 75650, applicant, seeks a water use 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 divert and use 100 acre-feet or water per annum, at a maximum diversion rate of 2.67 cfs (1200 gpm) from the perimeter of a proposed dam and reservoir to be constructed on an unnamed tributary of Potters Creek, tributary of the Sabine River, Sabine River Basin, approximately 9.3 miles southwest of Marshall in Harrison County, Texas. The reservoir (S1) will be a sediment control pond included in a surface coal mining operation which is exempt from the need of a water use permit pursuant to Texas Water Code §11.142(c). The impoundment will have a surface area of approximately 15.8 acres and a capacity of 45 acre-feet at the normal operating level. The diverted water will be used for industrial (dust suppression and road building) purposes. The applicant intends to remove the embankment forming the reservoir at the cessation of mining activities.

Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice. A public meeting is intended for the taking of public comment, and is not a contested case hearing. A public meeting will be held if the Executive Director determines that there is a significant degree of public interest in the application.

The TNRCC may grant a contested case hearing on this application if a written hearing request is filed within 30 days from the date of newspaper publication of this notice. The Executive Director may approve the application unless a written request for a contested case hearing is filed within 30 days after newspaper publication of this notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" (4) a brief and specific description of how you would be affected by the application in a way not common to the general public; and (5) the location and distance of your property relative to the proposed activity. You may also submit proposed conditions to the requested extension of time which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. If a hearing request is filed, the Executive Director will not grant the application and will forward it 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, 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-200005554
LaDonna Castañuela
Chief Clerk
Texas Natural Resource Conservation Commission
Filed: August 9, 2000

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Public Utility Commission of Texas

Joint Agreement of GTE Southwest, Inc., and Southwestern Bell Telephone Company, et. al., to Provide Optional, Two-Way, Extended Metropolitan Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of a joint agreement on July 25, 2000, seeking approval of two-way, optional, Extended Metropolitan Service (EMS) from the Hitchcock/Santa Fe Exchanges to the Houston Metropolitan Exchange, and the Exchanges of Alvin, and Liverpool, pursuant to P.U.C. Substantive Rule §26.217(b)(8).

Project Title and Number: Joint Agreement of GTE Southwest, Inc., and Southwestern Bell Telephone Company, *et.al.*, to Provide Optional, Two-Way, Extended Metropolitan Service (EMS) from the Hitchcock/Santa Fe Exchanges to the Houston Metropolitan Exchange, and the Exchanges of Alvin, and Liverpool, Pursuant to P.U.C. Substantive Rule §26.217(b)(8), Project Number 22825.

The Joint Petition and Agreement: The proposed plan is an optional offering to which GTE Southwest, Inc. residence and business local exchange customers within the Hitchcock/Santa Fe exchanges will be able to call all other telephone customers within the calling area for a monthly flat rate. The calling area consists of the following: All zones of the Houston Metropolitan Exchange, and the Alvin, and Liverpool exchanges served by Southwestern Bell Telephone Company; the Humble, Atascocita, Kingwood, and Porter exchanges served by Sprint/United Telephone Company; the Sugar Land exchange served by Alltel Communications, Inc.; and the Huffman, Crosby, Stafford, and Arcola exchange served by GTE Southwest, Inc.

The joint applicants have requested that the joint agreement filing be processed administratively pursuant to P.U.C. Substantive Rule §26.217(b)(8). Persons who wish to intervene in the proceeding or comment upon action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 by September 18, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005509

Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 1, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Vitts Networks, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22867 before the Public Utility Commission of Texas.

Applicant intends to provide all forms of local and interexchange telecommunications, including, but not limited to, Digital Subscriber Line, ISDN, and T1-Private Line services.

Applicant's requested SPCOA geographic area includes the area of Texas currently served by Southwestern Bell Telephone Company and Verizon Southwest (formerly known as GTE Southwest, Inc.).

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 August 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005394
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 2, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 3, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Tattleltel, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 22876 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, long distance and wireless services.

Applicant's requested SPCOA geographic area is believed to be those areas of Texas comprising the Amarillo, Dallas, and San Antonio Local Access and Transport Areas. Clarification on the service area is pending.

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 August 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005501
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2000

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on August 7, 2000, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151-54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Small Town Advanced Communications, LLC for a Service Provider Certificate of Operating Authority, Docket Number 22886 before the Public Utility Commission of Texas.

Applicant intends to provide plain old telephone service, Digital Subscriber Line, T1-Private Line, Fractional T1, and long distance services.

Applicant's requested SPCOA geographic area includes the area of Texas comprising the Austin, and San Antonio Local Access and Transport Areas, and the San Angelo Service Marketing Area.

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 August 23, 2000. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-200005510
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2000

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 28, 2000, pursuant to P.U.C. Substantive Rule §26.208 for approval of a tariff correction.

Tariff Title and Number: Application of Central Telephone Company of Texas, Inc. doing business as Sprint to Revise the General Customer Services Tariff and the IntraLATA Services Tariff, Pursuant to P.U.C. Substantive Rule §26.208. Tariff Number 22864.

The Application: Central Telephone Company of Texas, Inc. doing business as Sprint (Sprint) is filing this correction to clarify current local calling scopes, remove references to obsolete or grandfathered services and make other miscellaneous clean-up revisions.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech- impaired

individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. Please reference Tariff Number 22864.

TRD-200005499
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 2000

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Notice of Application Pursuant to P.U.C. Substantive Rule §26.208

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 28, 2000, pursuant to P.U.C. Substantive Rule §26.208 for approval of a tariff correction.

Tariff Title and Number: Application of United Telephone Company of Texas, Inc. doing business as Sprint to Revise the General Exchange Tariff, Local Exchange Tariff, and the IntraLATA Services Tariff, Pursuant to P.U.C. Substantive Rule §26.208. Tariff Number 22865.

The Application: United Telephone Company of Texas, Inc. doing business as Sprint (Sprint) is filing this correction to clarify current local calling scopes, remove references to obsolete or grandfathered services and make other miscellaneous clean-up revisions.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing- and speech- impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. Please reference Tariff Number 22865.

TRD-200005500
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 7, 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 August 3, 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 & Supplement 2000) (PURA). A summary of the application follows.

Docket Style and Number: Application of the Public Utilities Board of the City of Brownsville, Texas (BPUB) and Central Power and Light Company (CPL) to Amend Certificated Service Area Boundaries Within Cameron County. Docket Number 22875.

The Application: This service area exception is necessary to allow BPUB to provide electric service to Pine Creek Development L.L.C., owner of a 36+-acre tract and R.E.C.L. Limited Partnership, owner of a 234-acre tract. The area is bounded on the north by Naranjo Road, on the west by the US 77/US 83 Expressway and on the south and east by vacant range/farm land and has recently been annexed by the City of Brownsville. The land is unimproved at this time and no electric service is being provided. CPL is presently singly certificated to the area. BPUB will be providing water and wastewater service to the subdivision. CPL presently has a small three-phase distribution line parallel to Highway 511, north of the area. CPL also has a small single-phase distribution line east of the area parallel to Old Alice Highway. In order to serve the facility, BPUB will extend a heavy three-phase distribution line from its Titan Substation north to FM 511, west along FM 511 to Old Alice Road and south on Old Alice Road to Pine Creek Subdivision. This case shall be processed under the following deadlines.

Copies of the application and additional associated maps are available for review at BPUB's offices at 1425 Robin Hood Drive, Brownsville, Texas or in the offices of Davidson & Troilo, P.C., 7550 IH 10 West, Suite 800, San Antonio, Texas. Persons with questions about this project should contact John W. Davidson 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-200005512
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2000

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Public Notice of Workshop on Rulemaking to Amend §26.34, Telephone Prepaid Calling Services

The staff of the Public Utility Commission of Texas (commission) will host a workshop to discuss a rulemaking to amend §26.34, *Telephone Prepaid Calling Services* and address financial requirements for prepaid calling services companies and notification requirements to protect the public interest. Project Number 22777 has been established for this proceeding. The workshop will be held on Tuesday, August 29, 2000, beginning at 9:30 a.m. in the Commissioners' Hearing Room on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701.

Through this workshop, the commission will gather information from interested persons on PURA §17.001, and the issue of financial resources necessary for prepaid calling services companies to provide adequate service and notifications necessary to protect the public interest. The workshop agenda will be confined solely to these issues.

On or before August 22, 2000, the commission will file an agenda for the workshop and a draft rule for discussion at the workshop, which will be available in Central Records and on the project web site. Copies of the agenda and draft rule will also be available at the workshop.

Questions about Project Number 22777 may be referred to Thelma De Leon, Customer Protection Division, (512) 936-7117, thelma.deleon@puc.state.tx.us. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200005511
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2000

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The Texas A&M University System, Board of Regents

Request for Proposal

Texas A&M University requests proposals from consulting firms/contractors qualified to serve as Senior Consultant and Editor of an Institutional Self-Study for the Texas A&M University Health Science Center. Interested firms should be thoroughly versed and experienced in Institutional Self-Studies.

Information can be obtained from Mary Sue Gold Water, Assistant Director of Purchasing Services, Texas A&M University, P.O. Box 30013, College Station, Texas 77842-0013. Ms. Goldwater can be reached at (979) 845-4579 or e-mail ms-goldwater@tamu.edu. Proposals from interested firms/contractors should be directed to her attention at the above address.

Selection criteria will include competence, experience, knowledge and qualifications in the area of editing and consulting. Historically Underutilized Businesses are encouraged to participate in this request for proposal. All things being equal, a preference will be given to a consultant firm whose principal place of business in within the State of Texas.

TRD-200005445
Vickie Burt Spillers
Executive Secretary to the Board
The Texas A&M University System, Board of Regents
Filed: August 7, 2000

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San Antonio-Bexar County Metropolitan Planning Organization

Request for Proposal

The San Antonio-Bexar County Metropolitan Planning Organization (MPO) is seeking proposals from qualified firms to conduct the Regional Corridor Plan Study.

A copy of the Request for Proposals (RFP) may be requested by calling Jeanne Geiger, Senior Transportation Planner, at (210) 227-8651. Anyone wishing to submit a proposal must do so by 12:00 p.m. (CDT), Friday, September 15, 2000 at the MPO office:

Janet A. Kennison, Administrator Metropolitan Planning Organization 1021 San Pedro, Suite 2200 San Antonio, Texas 78212

The contract award will be made by the MPO's Transportation Steering Committee based on the recommendation of the project's consultant selection committee. The Regional Corridor Plan Consultant Selection Committee will review the proposals based on the evaluation criteria listed in the RFP.

Funding for this study, in the amount of $250,000, is contingent upon the availability of Federal transportation planning funds.

TRD-200005553
Janet A. Kennison
Administrator
San Antonio-Bexar County Metropolitan Planning Organization
Filed: August 9, 2000

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Veterans Land Board

Request for Proposals

The Texas Veterans Land Board (TVLB) is seeking proposals from entities (Operators) desiring to participate in the management and operation of up to four Texas State Veterans Homes. The TVLB has selected sites and is currently constructing four Veterans Homes in four different cities in Texas--Temple, Floresville, Bonham and Big Spring--(collectively, the Veterans Homes). Proposals should be submitted for the management and operation of any individual site or any combination (2, 3, or 4) of the four sites. The TVLB will consider proposals submitted by firms, joint ventures or other business arrangements whereby the Operator provides the operation and management services to the Veterans Home(s). The terms of the agreement that may be awarded as a result of the Request For Proposals (RFP), the contents of the RFP and the Operator's Proposal will require the Veterans Homes to be managed and operated as skilled nursing care facilities certified by the Texas Department of Human Services for Alzheimer's care. At least 75% of the residents will be Texas Veterans of the United States Armed Services and up to 25% may be spouses or surviving spouses of a Veteran.

Through the RFP, the TVLB intends to retain one or more experienced and qualified firms to manage and operate the Veterans Homes pursuant to a Management and Operations Agreement.

A complete copy of the RFP can be obtained by contacting Robin von Rosenberg, Texas Veterans' Homes, Veterans' Land Board, P.O. Box 12873, Austin, Texas 78711-2873, (512) 475-2336.

The RFP contains pertinent information concerning the preparation and submission of proposals, an explanation of how all proposals will be evaluated, and the terms of the agreement(s) that may be awarded as a result of the RFP. Operators with experience managing health care facilities are invited to submit proposals for consideration.

Proposers shall submit **7** copies of the proposal to: Texas Veterans Land Board, Attention: Larry R. Soward, P. O. Box 12873, Austin, Texas 78711-12873, or 1700 North Congress Avenue, Room 837, Austin, Texas 78701. **ALL PROPOSALS MUST BE RECEIVED NO LATER THAN 10:00 A.M. C.D.T. ON AUGUST 28, 2000.** Incomplete proposals or proposals received after the specified time will not be accepted. Faxed or e-mailed copies of the proposal will not be accepted.

A question and answer conference for all potential Proposers to the RFP will be held at 9:00 a.m. C.D.T. on August 16, 2000, at the Stephen F. Austin State Office Building, 1700 N. Congress Avenue, Room 831, Austin, Texas. Please notify the TVLB by fax (512) 463-5248, or e-mail (larry.soward@glo.state.tx.us) if you plan to attend this optional conference. Any Proposer who would like to tour the first completed Texas State Veterans Home in Temple, Texas is requested to notify the TVLB in the same manner.

TRD-200005503
Larry R. Soward
Chief Clerk, General Land Office
Veterans Land Board
Filed: August 7, 2000

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Texas Workforce Commission

Notice of Conference 4th Annual Texas Workforce Conference

A. CONFERENCE INFORMATION

The Texas Workforce Commission (TWC) is hosting its 4th Annual Texas Workforce conference in Houston, Texas on September 6th, 7th, and 8th, at the Westin Galleria Hotel. Conference attendance is expected to be 750-1000, and will include board members from each of

the 28 Local Workforce Development Boards, board directors and staff, employers, workers and other interested community members.

B. EXHIBITORS

Exhibitors are invited to participate in the conference. The conference exhibit area will be the site of an evening reception on the first day of the event to showcase exhibitors' services and products. The exhibit area will also serve as the refreshment center for attendees throughout the conference. Non-profit organizations may purchase booth rentals at a reduced fee. Details are on the registration form.

C. FOR INFORMATION

For information on booth availability, rates, and registration forms, please contact Jim Moore at (512) 936-2509 or email your request to jim.moore@twc.state.tx.us

D. ROOM, RESERVATIONS

A block of rooms has been reserved for TWC at the Westin Galleria and the partnering hotel, Houston Oaks. Calling the hotels at (713) 960-8100 can access reservation.

TRD-200005514
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: August 8, 2000

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Request for Proposals Customer Satisfaction Survey

A. PROPOSAL DESCRIPTION

The Texas Workforce Commission (the Commission) is soliciting proposals from contractors to develop and administer Customer Satisfaction Surveys. This Request for Proposals invites applicants to submit proposals, to develop, and administer surveys for customers of the Commission, both clients and employers. The surveys will assess customer satisfaction with Commission programs.

B. AUTHORIZATION TO AWARD CONTRACT

The Commission is authorized to issue this RFP and award contracts under its general authority in Texas Labor Code §302.002(b).

C. AVAILABLE FUNDING

Funding will be available for the public opinion contract for the 12-month period beginning October 16, 2000, to run through October 15, 2001.

D. ELIGIBLE APPLICANTS

Applicants submitting proposals must complete a 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 September 26, 2000. The anticipated contract effective date is October 16, 2000.

F. SCORING CRITERIA

The evaluation criteria for this RFP and their relative weights for scoring are: Demonstrated Past Experience, 35 points; Project Administration, 15 points; Cost Reasonableness, 30 points; Coordination, 5 points; Financial Integrity/Cash Flow, 15 points.

G. SELECTION, NOTIFICATION AND NEGOTIATION PROCESS

The Commission will use competitive negotiation to determine awards. Proposals will be evaluated and tentatively ranked by the Commission. Applicants submitting superior proposals may be invited to make oral presentations to the Commission

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. TEXAS WORKFORCE COMMISSION'S CONTACT PERSON

For further information and to request a package for RFP # PPRD 00-15, contact Lucinda Anderson, Program Specialist, Texas Workforce Commission, Room 440T, 101 East 15th Street, Austin, Texas 78778-0001, (512) 936-2613, fax (512) 936-3420, e-mail address lucinda.anderson@twc.state.tx.us

TRD-200005515
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: August 8, 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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