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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. 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.

Requests for Opinions

RQ-1200. Requested from The Honorable Ronald D. Hankins, Somervell County Attorney, P.O. Box 1335, Glen Rose, Texas, 76043, concerning authority of county to improve streets within city limits that are not connecting link or integral part of county road system; reconsideration of Letter Opinion No. 97-084.

RQ-1201. Requested from William R. Archer, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, concerning the Binding Effect of Government Agency Rules on Other State Entities.

RQ-1202. Requested from William R. Archer, M.D., Commissioner of Health, Texas Department of Health, 1100 West 49th Street, Austin, Texas, 78756-3199, concerning whether the Federal Nutritional Labeling and Education Act of 1990 has preempted Section 434.007 of the Health and Safety Code.

RQ-1203. Requested from Mr. Gary L. Warren, Sr., Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas, 78768-2286, concerning meaning of "Texas trade

association" in Government Code Section 419.006 relating to conflicts of interest and the Texas Commission on Fire Protection.

RQ-1204. Requested from The Honorable Frank Madla, Chair, Senate Nominations Committee, Texas State Senate, P.O. Box 12068, Austin, Texas, 78711, concerning authority of County to impose permit and development fees for drilling and/or equipping of water wells.

RQ-1206. Requested from The Honorable Susan A. Spataro, Travis County Auditor, P.O. Box 1748, Austin, Texas, 78767, concerning duty of county clerk to collect mental health court fees.

TRD-9816084

Sarah Shirley

Assistant Attorney General

Office of the Attorney General

Filed: October 14, 1998



TEXAS ETHICS COMMISSION

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

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

Advisory Opinion Requests

AOR-441. Closed. Withdrawn by requestor.

TRD-9816072

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: October 14, 1998



AOR-450. The Texas Ethics Commission has been asked to consider the following question:

Is it permissible, under the laws subject to interpretation by the Texas Ethics Commission, for a member of the Texas Legislature to serve as

a paid consultant to a for-profit accounting and investment firm that has, as a major client, a for-profit medicaid services provider which pays a part of its business receipts to the accounting and investment firm for accounting services and investment activities?

TRD-9816075

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: October 14, 1998



EMERGENCY RULES

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

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

TITLE 4. AGRICULTURE

Part I. Texas Department of Agriculture

Chapter 21. Citrus

Subchapter B. Citrus Quality

4 TAC §21.21

The Department of Agriculture (the department) adopts on an emergency basis, an amendment to §21.21, concerning the minimum juice content requirements for grapefruit. The department is acting on a request by citrus producers in the state for the department to reduce the current juice content requirement for grapefruit found in the department's citrus quality rules for the 1998 grapefruit growing season. The department believes that reducing the minimum juice content requirement for grapefruit for the 1998 crop year is both necessary and appropriate. This amendment is effective only until midnight October 31, for the 1998 crop year.

Adverse weather conditions have created a situation compelling a reduction in the juice content requirement for grapefruit. The unusual drought conditions this summer resulted in citrus producers not having access to the water necessary for normal juice content relative to fruit size. A failure to immediately act to reduce the minimum juice content requirements for grapefruit could create a significant economic loss to citrus producers and the state's economy.

The emergency amendment to §21.21 reduces the minimum juice requirement for grapefruit by 10% for the 1998 crop year.

The amendment is adopted on an emergency basis under the Texas Agriculture Code, §94.003, which provides the Texas

Department of Agriculture with the authority to adopt rules relating to seasonal requirements of citrus fruit for fitness for human consumption and the Government Code, §2001.34, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§21.21. Standards.

Grapefruit handled after July 31 and before December 2 and oranges after July 31 and before November 2 must be mature and fit for consumption. Fruit are considered mature and fit for consumption if the following conditions are met:

(1) Grapefruit:

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

(C) The minimum juice content requirement for grapefruit, as stated in subparagraph (1)(B) of this section is reduced by 10% for the 1998 growing season, ending October 31, 1998.

(2) (No change.)

Filed with the Office of the Secretary of State, on October 9, 1998.

TRD-9815903

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: October 9, 1998

Expiration date: October 31, 1998

For further information, please call: (512) 463-7541

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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 7. BANKING AND SECURITIES

Part I. Finance Commission of Texas

Chapter 1. Consumer Credit Commissioner

Subchapter A. Regulated Loan Licenses

Division 5. Refund

7 TAC §§1.91, 1.92, 1.94

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

The Finance Commission of Texas (the commission) proposes the repeal of §§1.91, 1.92 and 1.94. This repeal is necessary as the sections that are proposed for repeal relate to the procedures for refunds of Chapter 3 loans due to prepayment or acceleration. Chapter 3, Texas Civil Statutes, Article 5069-3.01 *et seq.*, was repealed by the 75th Legislature (1997). Moreover, these rules are being replaced by a new set of rules for Chapter 3A, a new chapter of the *Texas Credit Title* which encompasses old Chapter 3 through 5. The new rules are being published for comment in the *Texas Register*.

Leslie L. Pettijohn, Consumer Credit Commissioner, has determined that for the first five-year period of the repeal as proposed will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing the repeal.

Ms. Pettijohn also has determined that for each year of the first five-year period the repeal as proposed will be in effect, the public benefit anticipated as a result of the repeal is the removal of unenforceable and obsolete regulations which will provide space for replacement rules. There is no anticipated cost to persons who are required to comply with the repeal as proposed. There will be no adverse economic effect on small businesses.

Comments on the proposed repeals may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The repeals are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A. The repeals will not be adopted until the proposed replacement sections are adopted.

The statutory provisions (as currently in effect) affected by the proposed repeals are Texas Civil Statutes, Article 5069, Chapter 3A, Subchapter H.

§1.91. *Interest Refund-Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date.*

§1.92. *Interest Refund-Prepayment in Full Before the First Installment Due Date.*

§1.94. *Refunds-Excess.*

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 October 12, 1998.

TRD-9815913

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 936-7640



Subchapter G. Interest and Other Charges on Secondary Mortgage Loans

7 TAC §§1.701-1.708

The Finance Commission of Texas (the commission) proposes new §§1.701-1.708, concerning the methods for calculating maximum interest and other charges, additional interest for default and deferment under Subchapter G, Chapter 3A, Texas Civ. Stat., Art. 5069. Additionally, the rules prescribe procedures for these transactions.

Section 1.701 describes the manner for determining the maximum rate or amount of interest by type of transaction.

Section 1.702 details the treatment of odd periods of time, those less than a month in the first installment period, for calculating interest.

Section 1.703 clarifies the procedures for assessing and collecting default charges in connection with a Subchapter G loan.

Section 1.704 explains the method and procedures for calculating and collecting a deferment charge on a Subchapter G loan.

Section 1.705 enumerates additional charges that may be assessed on a Subchapter G loan after consummation of the loan.

Section 1.706 enumerates additional charges that may be collected on or before closing of a Subchapter G loan.

Section 1.707 discusses the treatment and applicability of other fees in the context of a Subchapter G loan.

Section 1.708 addresses contracting for balloon payments on a Subchapter G loan.

These rules are necessary due to the repeal of the former Article 5069, Chapter 5 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules.

Commissioner Pettijohn also has determined that for each year of the first five-year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification to lenders of the maximum allowable charges provided under the law, thereby assisting lenders and borrowers in constructing transactions that comply with the law. It is anticipated that there will be no adverse economic effect on small businesses.

Comments on the proposed adoption of the new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Art. 5069-3A, Subchapter G is affected by these proposed new sections.

§1.701. Maximum Interest Charge.

(a) Precomputed secondary mortgage loan. In a precomputed secondary mortgage loan, an authorized lender may contract for, charge, or receive an amount of interest that does not exceed the applicable simple interest rate authorized by Tex. Rev. Civ. Stat. Art. 5069-Chapter 1D, Subchapter A. Prepaid interest is not permitted unless expressly authorized by statute (*e.g.*, an administrative loan fee).

(b) Interest-bearing loan. In an interest-bearing secondary mortgage loan, an authorized lender may contract for, charge, or receive any rate of interest that does not exceed the applicable amount

authorized by Tex. Rev. Civ. Stat. Art. 5069- Chapter 1D, Subchapter A, as calculated under the true daily earnings method or the scheduled installment earnings method. Prepaid interest in the form of points, such as origination or discount points, may be contracted for, charged, or received by an originating lender, so long as the total amount of interest contracted for, charged, or received, when spread over the full term of the loan as permitted by Tex. Rev. Civ. Stat. Art. 5069-1C.101, does not exceed the applicable interest limit in Tex. Rev. Civ. Stat. Art. 5069-1D, Subchapter A.

(c) Method of calculation. An authorized lender making loans under Article 5069- 3A.501(c) may calculate the rate and amount of interest by any method of calculation as long as the amount of interest charged does not exceed the maximum rate or amount of interest set forth in Article 5069-3A.501 calculated using the specified earnings methods contained in Article 5069-3A.501.

§1.702. Treatment of Periods Less Than a Full Month.

(a) To calculate a period of time less than a full month on a precomputed loan:

(1) any period before the first installment due date that includes a part of a month longer than 15 days may be treated as a full month for interest calculation purposes;

(2) any period before the first installment due date that includes a part of the month that is 15 days or less may not be treated as a full month for interest calculation purposes. The amount of interest for the period of 15 days or less must be calculated under the true daily earnings method. This amount may be added to the first installment or, alternatively, it may be allocated among all of the installments.

(b) In respect to counting the additional odd days in a first installment period, an authorized lender, on a regular transaction, may utilize one of the methods listed below so long as the method utilized is consistently applied to all applicable loan transactions initiated by the authorized lender.

(1) Texas Credit Title method. Under this method, the odd days are determined by counting the number of days beyond one month from the date of the loan to the scheduled installment due date.

(2) Regulation Z method. Under this method, the odd days should be determined in accordance with *Regulation Z - Truth-in-Lending*, 12 C.F.R. Part 226, Appendix J. The odd days are determined by first ascertaining the one month anniversary date preceding the first scheduled installment due date. After determining the one month anniversary date preceding the first scheduled installment due date, the odd days are determined by counting the number of days preceding the one month anniversary date preceding the first scheduled installment due date.

(c) An authorized lender may not contract for or charge more than the maximum rate authorized by Articles 5069-Chapter 1D, Subchapter A in calculating the interest charge for the additional odd days in the first installment period.

§1.703. Default Charges.

(a) Precomputed loan. Additional interest for default may be charged in a precomputed secondary mortgage loan, whether regular or irregular, or on a secondary mortgage loan that employs the scheduled installment earnings method, to the extent it is authorized by Tex. Rev. Civ. Stat. Art. 5069-3A.502 or Art. 5069- 3A.505.

(b) Interest-bearing loan. No additional interest for default may be charged on an interest-bearing secondary mortgage loan except for a loan contracted for on the scheduled installment earnings method.

(c) Contract required. No default charge may be assessed, imposed, charged, or collected unless contracted for in writing by the parties.

(d) Default period. A default charge may not be assessed until the 10th day after the installment due date. For example, if the installment due date is the 1st, a default charge may not be assessed until the 11th.

(e) Missed payment covered by insurance. If any payment or partial payment in default is later paid by some form of insurance, such as credit disability insurance or collateral protection insurance, any prior assessment of additional interest for default must be waived.

(f) Pyramiding prohibited. An authorized lender seeking to assess additional interest for default in a precomputed secondary mortgage loan under Tex. Rev. Civ. Stat. Article 5069-3A.502 or Article 5069-3A.505 must comply with the prohibition on the pyramiding of late charges set forth in the Federal Trade Commission Credit Practices Rule at 16 C.F.R. § 444.4 or in Regulation AA, 12 C.F.R. Part 227, promulgated by the Board of Governors of the Federal Reserve Board, as applicable.

§1.704. Deferment.

(a) Definition. The term deferment means the postponement of the due date of a scheduled installment. A deferment charge prescribed by this section may occur in a loan transaction that employs either the precomputed or the scheduled installment earnings method of calculation. A separate deferment charge is not applicable to a loan transaction that employs the true daily earnings method since an extension of time would be calculated on elapsed daily charges and the parties may agree to modify the terms of the transaction as long as the modification conforms to the requirements of Subchapter G.

(b) Bilateral or mutual deferment. A borrower and a lender may mutually agree to defer any scheduled installment. There is no limit on the number of bilateral deferments that can be made during the time that a loan contract is in effect. Bilateral or mutual deferments must be agreed upon in writing.

(c) Deferment notice. Each deferment must be noted on the account record at the time the deferment is made. A written notice containing the conditions of the deferment must be furnished to the borrower. The deferment notice shall include the name of the lender, the name of the borrower, the loan number, the date of the deferment, the installment or installments being deferred, the deferment period, the amount of the deferment charge, the balance on the account, and the date and amount of the next installment due. The signature of the borrower denotes the borrower's agreement to a bilateral deferment.

(d) Computation of deferment charge for a regular transaction. Each deferment charge on a regular loan transaction shall be computed in accordance with the method prescribed by the loan contract. If the loan contract does not provide for a deferment charge, then no deferment charge may be assessed or collected. A lender may employ any of the prescribed computational methods described in Chapter 3A so long as the computational method employed is consistently utilized throughout the term of the loan.

(1) If the first installment is to be deferred, the interest for the deferment may be no more than the difference between the refund that would be required for prepayment in full on the first installment due date, if it were one month from the date of the loan, and the total interest charged subject to being refunded (e.g., administrative loan fee).

(2) If any installment subsequent to the first installment is deferred, the deferred installment period will be determined by dividing the remaining precomputed balance owed on the account by the regular scheduled installment amount. The dollar amount associated with the deferred installment period must be rounded down to the nearest whole integer. Additionally, no deferred installment period may have a default charge assessed against the deferred installment period. After the determination of the deferred installment period, the additional interest for the deferment may not exceed the difference between the refund that would be required for prepayment in full for the determined deferred installment and the refund that would be required for the prepayment in full of the next succeeding installment. The resulting difference shall be multiplied by the number of months in the deferment period. For example, the terms of a precomputed Art. 5069-3A.501(a) loan are as follows: Date of loan: 09/01/1997; First payment due date: 10/01/1997; Cash Advance: \$2,766.48; Finance Charge: \$833.52; Total of Payments: \$3,600.00; Term: 36 months; Monthly Installment: \$100; Refunding method: Sum of the periodic balances; and Annual Percentage Rate: 18%. Assume a deferment is agreed to roughly six months into the contract and, at that time, the remaining precomputed balance owed on the account was \$3,095.00 and the regularly scheduled installment amount was \$100.00. The nearest whole integer for the dollar amount associated with the deferred time period would be 30 ($\$3,095.00$ divided by $\$100 = 30.95$, rounded down to the nearest whole integer, 30). If a default charge had already been assessed on the 30th remaining installment, the nearest whole integer would be 29. Assuming no default charge had been assessed on the 30th remaining installment, the additional interest charge for the deferment would be the difference between the interest refund of the 30th and the 29th installments. This difference would be $\$37.54$ (interest refund as of the 30th installment = $\$581.96$; interest refund as of the 29th installment = $\$544.42$; $\$581.96 - \$544.42 = \$37.54$). A scheduled installment earnings refund method would yield a slightly different result of $\$36.69$.

(3) In lieu of computational methods one and two, a lender may take the difference between the amount of the refund of unearned interest as if a full prepayment of the loan occurred as of the date of the deferment and the amount of the refund of unearned interest for a full prepayment of the loan one full month prior to the date of the deferment. The results of the computed interest for deferment charge under this subsection should be multiplied by the number of months in the deferred installment period.

(e) No deferment when payment applied to account balance. If a payment has been applied to reduce an account balance, no deferment of any prior balance or installments may be made. This does not preclude the collection of a deferment fee previously assessed but not collected.

(f) No deferment when a default charge has already been collected. No installment may be deferred if a default charge has already been collected on the account or if a partial payment in any amount has been credited to any installment. If an amount equal to one whole installment has already been credited to an account, this entry cannot be altered in order to credit part of the installment to a deferment charge.

(g) Accounting of payment. If a payment is submitted from which a deferment charge is taken, the excess of the amount necessary to bring the account current shall be applied to the remaining balance of the loan. However, any difference that exceeds three dollars shall be returned to the borrower upon the borrower's request.

(h) Noncompliance. Deferment fees not assessed or collected in accordance with the requirements of this rule are subject to refund to the borrower. In the event deferment fees are refunded to the borrower, no rescheduling of the loan contract is permitted.

§1.705. Amounts Authorized To Be Charged after Consummation.

(a) Generally. A secondary mortgage loan contract may provide for any one or more of the four listed categories of charges set forth in Tex. Rev. Civ. Stat. Art. 5069-3A.507. These charges may then be assessed and collected by an authorized lender after consummation of the loan if appropriately included in the contract.

(b) Attorney's fees. Consistent with Tex. Rev. Civ. Stat. Art 5069-3A.852(b)(2), an authorized lender may only assess or collect attorney's fees pursuant to Tex. Rev. Civ. Stat. Art. 5069-3A.507(2) that have been assessed by a court.

(c) Check return fee. An authorized lender may contract for, assess, or collect the fee authorized by Tex. Rev. Civ. Stat. Art. 9022 in a secondary mortgage loan.

§1.706. Amounts Authorized To Be Collected on or before Closing.

(a) Generally. On or before the closing of a secondary mortgage loan, an authorized lender may collect any one or more of the eight categories of charges set forth in Tex. Rev. Civ. Stat. Art. 5069-3A.508(a).

(b) Administrative loan fee. An authorized lender may collect an administrative loan fee pursuant to Acts 1997, 75th Legislature, Chapter 164 on interest bearing and pre-computed loans.

(1) To determine the maximum amount of the administrative fee, an authorized lender should ascertain the amount of the cash advance of the loan. If the cash advance is more than one thousand dollars, then the authorized lender may contract for, charge, or receive \$25. If the cash advance is one thousand dollars or less, then the authorized lender may contract for, charge, or receive \$10.

(2) An administrative fee may not be contracted for, charged, or received by an authorized lender directly or indirectly on a renewal or modification of an existing obligation more than once in any 180 day period. The administrative fee may be contracted for, charged, or received in a renewal or modification if the authorized lender did not contract for, charge, or receive the administrative fee on any previous obligation within the 180 day period.

(3) Interest may not be assessed, charged, or received on an administrative fee if the assessment causes the total amount of interest to exceed the maximum amount authorized under Chapter 3A.

(c) Appraisal fees. An appraisal fee may be charged when an appraisal has been performed by an appraiser, certified or licensed by the Texas Appraiser Licensing and Certification Board pursuant to Tex. Rev. Civ. Stat. Art. 6573a.2., and who is not a salaried employee of the lender.

(d) Cost of credit report. An authorized lender may collect the cost paid to a credit reporting agency to obtain a credit report pursuant to Tex. Rev. Civ. Stat. Art. 5069-3A.508(a)(5) but may not charge an additional fee for reviewing or evaluating a credit report.

(e) Survey fees. A survey fee may be charged when a survey has been performed by a surveyor, registered or licensed by the Texas Board of Professional Land Surveying pursuant to Tex. Rev. Civ. Stat. Art. 5282c., and who is not a salaried employee of the lender.

(f) Flood zone determination fees. An authorized lender may collect a flood zone determination fee when a flood zone determination is required by a federal agency.

§1.707. Other Fees.

(a) Generally. Fees not otherwise permitted by 7 T.A.C. §1.705 or §1.706 may not be charged or collected in a secondary mortgage loan transaction.

(b) Examples of unauthorized fees. Fees not authorized by either 7 T.A.C. §1.705 or §1.706 include, but are not limited to, commitment fees, those broker fees not covered by subsection (d) of this section, pay-off statement fees, prepayment penalties, fax fees, courier fees, and escrow management fees.

(c) Escrow services. An authorized lender making a secondary mortgage loan may require a borrower to make payments into an escrow trust account for payment of anticipated tax and property insurance expenses. A fee may not be charged for managing an escrow trust account.

(d) Broker fees. An authorized lender may pay a broker fee in a secondary mortgage loan if the consideration paid by the borrower in the loan which involves a broker does not exceed the consideration paid by the borrower in a loan which does not involve a broker.

(1) Example 1: A prospective borrower is quoted a contract rate of 12% plus a 2% origination fee when he makes his inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 4% origination fee for a loan of the same amount from the same authorized lender. The charge for an additional 2% origination fee is an unauthorized charge.

(2) Example 2: A prospective borrower is quoted a finance charge of 12% plus a 2% origination fee when the borrower makes the inquiry directly to an authorized lender. On this same individual, a broker quotes a contract rate of 12% plus a 2% origination fee for a loan of the same amount from the same authorized lender. The loan was then consummated with the authorized lender paying a 2% fee to the broker for originating the loan. Since the authorized lender has absorbed the expense of the fee, no unauthorized charge has been assessed, charged, or received.

(e) Seller's points. Seller's points are treated as interest. Seller's points are aggregated with other interest charges for the purposes of a usury calculation.

(f) Discount points. Discount points are treated as interest. Discount points are aggregated with other interest charges for the purposes of a usury calculation.

(g) Origination fees. An origination fee is treated as interest. An origination fee is aggregated with other interest charges for the purposes of a usury calculation.

§1.708. Balloon Payments.

Balloon payments are authorized in a secondary mortgage loan unless prohibited by other applicable law (for example, the high cost mortgage rules of Truth in Lending, Regulation Z, 12 C.F.R. §226.32(d)(1)).

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 October 12, 1998.

TRD-9815922

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: November 22, 1998



Subchapter H. Refunds in Precomputed Loans

7 TAC §§1.751-1.761

The Finance Commission of Texas (the commission) proposes new §§1.751-1.761, concerning the methods for computing refunds of unearned interest due to prepayment or acceleration of Subchapter E, F, or G transactions that are precomputed as provided in Subchapter H, Chapter 3A, Article 5069.

Section 1.751 explains the scope and applicability of the subchapter.

Section 1.752 prescribes the method for calculating refunds of interest of Subchapter E and G loans.

Section 1.753 explains the method for refunding interest in Subchapter E and G loans when prepayment occurs before the first installment due date.

Section 1.754 explains the method for refunding interest in Subchapter E and G loans with a term of sixty months or less.

Section 1.755 explains the method for refunding interest in Subchapter E & G loans with a term of more than sixty months and for which prepayment occurs before the first installment due date.

Section 1.756 explains the method for refunding interest in Subchapter E and G loans with a term of more than sixty months.

Section 1.757 explains the methods for refunding interest in irregular Subchapter E and G loans.

Section 1.758 explains the charges subject to refunding in Subchapter F loans.

Section 1.759 explains the method for refunding installment account handling charges and acquisition charges on Subchapter F loans for which prepayment occurs before the first installment due date.

Section 1.760 explains the method for refunding installment account handling charges and acquisition charges in Subchapter F loans.

Section 1.761 details the situation in which a lender provides excess refunds to a borrower and the applicable procedures for handling the situation.

These rules are necessary due to the repeal of the former Article 5069, Chapters 3, 4, and 5 and the adoption of new Article 5069-3A.001 *et seq.* Generally, these procedures are well established and are commonly used throughout the regulated industry. These rules should serve, however, to clarify the calculations and procedures.

Leslie L. Pettijohn, Consumer Credit Commissioner has determined that for the first five-year period these rules will be in effect, there will be no fiscal implications for state or local government as a result of administering or enforcing these rules.

Commissioner Pettijohn also has determined that for each year of the first five- year period these rules will be in effect, the public benefit anticipated as a result of the adoption of the new rules is the clarification to lenders of the maximum allowable charges provided under the law, thereby assisting lenders and borrowers in constructing transactions that comply with the law.

It is anticipated that there will be no adverse economic effect on small businesses.

Comments on the proposed new sections may be submitted in writing to Leslie L. Pettijohn, Consumer Credit Commissioner, 2601 North Lamar Boulevard, Austin, Texas 78705-4207.

The new sections are proposed under Texas Civil Statutes, Article 5069-3A.901, which authorizes the Finance Commission to adopt rules to enforce new Chapter 3A.

Texas Civil Statutes, Art. 5069-3A, Subchapter H is affected by these proposed new sections.

§1.751. Scope.

(a) Scope. This subchapter applies to all precomputed loan transactions made pursuant to subchapters E, F, and G of Article 5069, Chapter 3A. This subchapter is inapplicable to interest-bearing loans made under the same subchapters.

(b) Refund methods. The chosen method of determining refunds must be contracted for in the loan agreement. An authorized lender may utilize one of two methods of determining the amount of a refund:

- (1) the sum of the periodic balances method; or
- (2) the installment earnings method.

§1.752. Specific Application to Subchapter E and G Loans.

(a) Interest subject to refund. Precomputed interest in Subchapter E and G loans is subject to refund.

(b) Interest not subject to refund.

(1) Administrative loan fees authorized by Acts 1997, 75th Legislature, Chapter 164 in Subchapter E and G loans are not subject to refund.

(2) Per diem interest. Per diem interest on odd days in the first installment period is not subject to being refunded if the per diem interest for the first installment period has been earned and collected during the first installment period.

(3) Refunds less than one dollar. Refunds of unearned interest are not required when a partial prepayment is made or when the sum of interest to be refunded is less than \$1.

§1.753. Refund of Precomputed Interest in Regular Subchapter E and G Loans; Prepayment in Full before the First Installment Due Date.

(a) If the first installment due date is 15 days or less from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date 1/30 of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount shall be refunded or credited to the borrower.

(b) If the first installment due date is 16 days or greater, but less than one month, from the date of the loan, the lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date 1/30 of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date.

(c) If the first installment due date is more than one month from the contract date, the lender may retain for each elapsed day between the date of the loan and prepayment, 1/30 of the interest which could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. The

daily charge is multiplied by the number of elapsed days up until the first installment due date.

§1.754. Refund of Precomputed Interest in Regular Subchapter E and G Loans with the Term of the Loan Sixty Months or Less; Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date.

If prepayment in full is made by cash, renewal or otherwise, the lender shall refund or credit to the borrower the unearned interest by the refund method authorized by 7 TAC §1.751(b) and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

§1.755. Refund of Precomputed Interest in Regular Subchapter E and G Loans with the Term of the Loan More Than Sixty Months; Prepayment in Full before the First Installment Due Date.

An authorized lender may retain an interest charge for each elapsed day between the date of the loan and the date of prepayment. The interest charge may not exceed the amount of interest allowed under the true daily earnings method for the same time period.

§1.756. Refund of Precomputed Interest in Regular Subchapter E and G Loans with the Term of the Loan More Than Sixty Months; Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date.

An authorized lender may retain an interest charge after the first installment that does not exceed an amount calculated in accordance with Article 5069-3A.602.

§1.757. Refund of Precomputed Interest in Irregular Subchapter E and G Loans.

If prepayment in full is made by cash, renewal, or otherwise in an irregular Subchapter E or G loan, the lender shall refund or credit to the borrower all unearned interest. The amount of interest which may be retained by the lender as earned shall be determined by use of the accrual method as authorized by Article 5069-3A.602 and 7 TAC §1.755 and §1.756.

§1.758. Specific Application to Subchapter F Loans.

(a) Items subject to refund. The following charges in Subchapter F loans are subject to refund:

- (1) Installment account handling charge; and
- (2) Acquisition charge in which the cash advance is more than \$100.

(b) Items not subject to refund. An acquisition charge in a loan in which the cash advance is \$100 or less is not subject to refund, as the charge is considered to be earned at the time the loan is made.

§1.759. Refund of Precomputed Interest in Subchapter F Loans; Prepayment in Full before the First Installment Due Date.

(a) If the first installment due date is one month or less from the date of the loan, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the first installment due date 1/30 of the installment account handling charge and acquisition charge subject to being refunded, that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date. All interest in excess of such amount shall be refunded or credited to the borrower.

(b) If the first installment due date is more than one month from the contract date, the authorized lender may retain for each elapsed day between the date of the loan and prepayment before the

first installment due date 1/30 of the interest that could be retained if the first installment period were one month and the loan was prepaid in full on the first installment due date up to a maximum of 30 days. All interest in excess of such amount shall be refunded to the borrower or credited to the borrower's account.

§1.760. Refund of Precomputed Interest in Subchapter F Loans; Prepayment in Full after the First Installment Due Date and before the Final Installment Due Date.

If prepayment in full is made by cash, renewal, or otherwise, the authorized lender shall refund or credit to the borrower the unearned installment account handling charge and acquisition charge subject to refund by the refund method authorized by 7 TAC §1.751(b) and identified in the loan agreement as the chosen refund method. One day earned into a month will allow the lender to earn the interest applicable to the full month.

§1.761. Excess Refunds.

If a lender has refunded more than required to a borrower, the excess refund may not be collected from or debited to the account of a borrower unless the borrower voluntarily agrees to pay back the excess refund or the borrower voluntarily agrees, in writing, to have his existing account adjusted when the excess refund was made on the renewal of the preceding account.

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

Filed with the Office of the Secretary of State, on October 12, 1998.

TRD-9815923

Leslie L. Pettijohn

Commissioner

Finance Commission of Texas

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 936-7640



Chapter 4. Currency Exchange

7 TAC §4.3

The Finance Commission of Texas (the commission) proposes an amendment to §4.3, concerning reporting and recordkeeping. The proposed amendment to §4.3(d) will grant the agency the flexibility to reduce informational requirements in quarterly report forms as needed. Quarterly reports currently contain data that the agency believes it can obtain by other means.

Stephanie Newberg, Director, Special Audit Division, Texas Department of Banking, has determined that for each year of the first five-years the section as proposed will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Newberg also has determined that for each year of the first five-year period the section as proposed will be in effect, the public benefit anticipated as a result of the amendment will be a reduction in the regulatory burden imposed on licensees. No economic cost will be incurred by a person required to comply with this section, and there will be no effect on small businesses.

Comments on the proposal may be submitted in writing to Stephanie Newberg, Director, Special Audit Division, Texas Department of Banking, 2601 North Lamar

Boulevard, Austin, Texas 78705-4294, or by e-mail to stephanie.newberg@banking.state.tx.us.

The amendment is proposed pursuant to the Finance Code, §153.002(2), which authorizes the commission to adopt rules "necessary to implement this chapter, including ... recordkeeping and reporting requirements of a license holder."

Finance Code, Chapter 153, is affected by the proposed amendment.

§4.3. *Reporting and Recordkeeping.*

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

(d) Each currency business shall, in a form prescribed by the banking commissioner (the commissioner), file quarterly written reports with the department. Except to the extent waived by the commissioner in the report form for a particular quarter, each report [These reports] must include:

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

(e)-(j) (No change.)

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

Filed with the Office of the Secretary of State, on October 9, 1998.

TRD-9815861

Everette D. Jobe

Certifying Official

Finance Commission of Texas

Proposed date of adoption: December 11, 1998

For further information, please call: (512) 475-1300



Part II. Texas Department of Banking

Chapter 19. Trust Company Loans and Investments

Subchapter C. Real Estate

7 TAC §19.51

The Finance Commission of Texas (the commission) proposes new §19.51 concerning the treatment of other real estate owned (OREO) by a state trust company.

Under Texas Civil Statutes, Article 342a-5.104, a trust company may not invest its restricted capital in real estate except as an investment in trust company facilities, or as otherwise permitted by Texas Civil Statutes, Article 342a-101 et seq, or rules adopted thereunder, or if necessary to minimize a loss on a loan or investment previously made in good faith. In addition, with prior approval of the banking commissioner, Texas Civil Statutes, Article 342a-5.104, permits a trust company to exchange real estate acquired with restricted capital for other real estate or personal property, to invest additional funds in or improve real estate acquired with restricted capital, or to acquire additional real estate to avoid or minimize loss on real estate acquired with restricted capital.

OREO is generally defined by Texas Civil Statutes, Article 342a-5.104, and proposed §19.51(a)(10) as real property interests not used or intended to be used as trust company facilities. A

trust company is not empowered to invest its restricted capital in real estate, other than for use in its own business, except in specified circumstances, such as acquisition of real estate through foreclosure of collateral securing debt previously contracted. A trust company may invest its secondary capital in real estate, subject to the exercise of prudent judgment using the factors contained in Texas Civil Statutes, Article 342a-5.101(f). The general prohibition on investing restricted capital in real property interests, and the permissible means of investing restricted capital in OREO, are set forth in proposed §19.51(b) and (c). Proposed §19.51(d) specifies appraisal requirements for OREO acquired with restricted capital, and proposed §19.51(e) permits the trust company to make additional investment in OREO acquired with restricted capital to preserve its value pending required disposition.

The trust company must dispose of OREO acquired with restricted capital within a specified period of time, or holding period, set forth in proposed §19.51(f), and such efforts must be documented under proposed §19.51(g). Proposed §19.51(h) establishes those methods of disposition that will satisfy the statutory requirement. For example, disposition pursuant to a contract for deed is specifically permitted, even though legal title remains with the trust company until the contract is fully performed. Proposed §19.51(i) establishes that a trust company must account for OREO under regulatory accounting principles, defined in Texas Civil Statutes, Article 342a-1.002(a)(41) as generally accepted accounting principles, as modified by rule or applicable federal statute or regulation. At present, no rules modify generally accepted accounting principles for OREO.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the new section is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering this section.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections are the clarification of complex statutory standards to aid the industry in compliance. No economic costs will affect regulated entities as a result of complying with the proposed sections.

Comments on the proposed section may be submitted in writing to Jeffrey L. Schrader, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to jeff.schrader@banking.state.tx.us.

The section is proposed under Texas Civil Statutes, Article 342a-5.104(a)(1), which authorizes the commission to adopt rules regarding acquisition and retention of real estate.

Texas Civil Statutes, Article 342a-5.001 and Article 342a-5.104, are affected by the proposed new section.

§19.51. Other Real Estate Owned.

(a) Definitions. Words and terms used in this subchapter that are defined in Texas Civil Statutes, Articles 342a-1.001 et seq, have the same meanings as defined therein. The following words and terms when used in this subchapter shall have the following meanings unless the context clearly indicates the contrary.

(1) Appraisal—A written report by a state certified or licensed appraiser containing sufficient information to support the trust company's evaluation of OREO taking into consideration market value, analyzing appropriate deductions or discounts, and conforming

to generally accepted appraisal standards, unless principles of safety and soundness applicable to trust companies require stricter standards.

(2) Appraiser—A state certified or licensed staff appraiser or a state certified or licensed third party fee appraiser with relevant and competent experience and background as related to a particular appraisal assignment.

(3) Trust company facility—Real property, including improvements, owned or leased, to the extent the lease or the leasehold improvements are capitalized, by a trust company if the real estate is held for the purposes set forth in Texas Civil Statutes, Article 342a-5.001(a)(1)-(4), and is not disqualified under Texas Civil Statutes, Article 342a-5.001(c). The term also includes capitalized leasehold improvements if held for the same purposes.

(4) Coterminous sublease—A lease with the same duration as the remainder of the master lease.

(5) Evaluation—A written report prepared by an evaluator describing the OREO and its condition, the source of information used in the analysis, the actual analysis and supporting information, and the estimate of the OREO's market value, with any limiting conditions.

(6) Evaluator—An individual who has related real estate training or experience and knowledge of the market relevant to the OREO but who has no direct or indirect interest in the OREO. An appraiser may be an evaluator.

(7) Generally accepted appraisal standards—The Uniform Standards of Professional Appraisal Practice (USPAP) promulgated by the Appraisal Standards Board, Appraisal Foundation, Washington, D.C.

(8) Market value—The most probable price which a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

(A) buyer and seller are typically motivated;

(B) both parties are well informed or well advised, and acting in what they consider their own best interests;

(C) a reasonable time is allowed for exposure in the open market;

(D) payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and

(E) the price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale.

(9) Non-coterminous sublease—A lease with a duration shorter than the remainder of the master lease.

(10) Other Real Estate Owned (OREO)—Real estate, including improvements, mineral interests, surface, and subsurface rights, owned in whole or in part or leased by a trust company, no matter how acquired, which is not a trust company facility as defined by paragraph (3) of this subsection or leasehold property as permitted under Texas Civil Statutes, Article 342a-5.202.

(11) Staff appraiser—An appraiser on the staff of a trust company who has no direct or indirect interest in the OREO.

(12) Third party fee appraiser—An appraiser who has an independent contractor relationship with a trust company and has no direct or indirect interest in the OREO.

(13) Year—For the purposes of this section, a calendar year.

(b) Prohibition on real estate ownership. A trust company may not acquire or hold real estate except as specifically provided under Texas Civil Statutes, Articles 342a-5.001, 342a-5.104, and 342a-5.202, and this section.

(c) Acquisition of OREO with restricted capital. A trust company may hold OREO purchased with the restricted capital of the trust company only if acquired:

(1) by purchase under judicial or nonjudicial foreclosure, or through a deed in lieu of foreclosure, of real estate that is security for a debt or debts previously contracted in good faith;

(2) by purchase to protect its interest in a debt or debts previously contracted if prudent and necessary to avoid or minimize loss;

(3) with prior written approval of the banking commissioner, by an exchange of OREO or personal property for real estate to avoid or minimize loss on the real estate exchanged or to facilitate the disposition of OREO;

(4) with prior written approval of the banking commissioner, by purchase of additional real estate to avoid or minimize loss on OREO currently held;

(5) by involuntary acquisition of an ownership interest or leasehold interest in real estate as a result of or incidental to a judicial or nonjudicial foreclosure, or by adverse possession, or by operation of law without any action on the part of the trust company to obtain such interest; or

(6) by loss of designation of real estate owned or leased by the trust company as a trust company facility.

(d) Acquisition of OREO with secondary capital. A trust company may hold OREO purchased with the secondary capital of the trust company, subject to the exercise of prudent judgment using the factors set forth in Texas Civil Statutes, Article 342a-5.101(f).

(e) Appraisal requirements.

(1) Subject to paragraph (2) of this subsection, when OREO is acquired, a trust company must substantiate the market value of the OREO by obtaining an appraisal within 60 days of the date of acquisition. An evaluation may be substituted for an appraisal if the recorded book value of the OREO is less than \$250,000.

(2) An additional appraisal or evaluation is not required when a trust company acquires OREO if a valid appraisal or appropriate evaluation was made in connection with a real estate loan that financed the acquisition of the OREO and the appraisal or evaluation is less than one year old.

(3) An evaluation shall be made on all OREO at least once a year. An appraisal shall be made at least once every three years on OREO with a recorded book value in excess of \$250,000.

(4) Notwithstanding another provision of this section, the banking commissioner may require an appraisal of OREO if the banking commissioner considers an appraisal necessary to address safety and soundness concerns.

(f) Additional expenditures on OREO. A trust company may re-fit OREO for new tenants or make normal repairs and incur routine

maintenance costs to preserve or protect the value of the OREO or to render the OREO in saleable condition without prior notification to or approval by the banking commissioner. Other advances or additional expenditures on OREO acquired with the restricted capital of the trust company must have the prior written approval of the banking commissioner, and must not be:

- (1) made for the purpose of speculation in real estate;
- (2) made for the purpose of changing or altering the current status or intended use of the OREO; or
- (3) inconsistent with principles of safety and soundness applicable to trust companies.

(g) Holding period.

(1) A trust company must dispose of OREO acquired with the restricted capital of the trust company, except for real estate which became OREO pursuant to Texas Civil Statutes, Article 342a-5.001(c), no later than five years after it was acquired or ceases to be used as a trust company facility, unless an extension of time for disposing of the real estate is granted in writing by the banking commissioner pursuant to Texas Civil Statutes, Article 342a-5.104(d). A trust company must dispose of real estate which becomes OREO pursuant to Texas Civil Statutes, Article 342a-5.001(c), within two years of the date it ceases to be a trust company facility, unless a delay in the improvement and occupation of the property is approved in writing by the banking commissioner pursuant to Texas Civil Statutes, Article 342a-5.001(c).

(2) The holding period commences on the date that:

(A) ownership is acquired by the trust company pursuant to subsection (c)(1)-(5) of this section;

(B) OREO is acquired by the trust company through merger/consolidation, conversion, or purchase and assumption;

(C) the trust company first learns of its ownership interest in real estate which has devolved to the trust company by operation of law under subsection (c)(6) of this section;

(D) the trust company ceases to use a former trust company facility or completes its relocation from a former trust company facility to a new trust company facility; or

(E) is three years following the acquisition of real estate as a trust company facility for future expansion or relocation of the trust company if the real estate has not been occupied by the trust company, unless the banking commissioner has granted written approval to a further delay in the improvement and occupation of the real estate.

(3) The banking commissioner may grant one or more additional extensions of time for disposing of OREO acquired with the restricted capital of the trust company if the commissioner finds that the trust company has made a good faith effort to dispose of the OREO or that disposal of the OREO would be detrimental to the safety and soundness of the trust company.

(h) Disposition efforts; documentation. A trust company must make diligent and ongoing efforts to dispose of OREO acquired with the restricted capital of the trust company and must maintain documentation adequate to reflect those efforts. Such documentation must be available for inspection by the commissioner. If secondary capital is adequate to reclassify OREO in a manner that does not impinge on restricted capital, this disposition requirement does not apply.

(i) Disposition of OREO. A trust company may dispose of OREO by:

(1) selling the OREO in a transaction that qualifies as a sale under regulatory accounting principles;

(2) selling the OREO pursuant to a land contract or contract for deed;

(3) retaining the property for its own use as a trust company facility, subject to the approval of the commissioner;

(4) transferring the OREO for market value to an affiliate, subject to Texas Civil Statutes, Article 342a-4.107, and applicable federal law, including 12 United States Code, §§371c, 371c-1, and 1828(j);

(5) if the OREO is a master lease, obtaining a coterminous sublease or an assignment of a coterminous sublease, provided that if the trust company acquires or obtains assignment of a non-coterminous sublease, the holding period during which the master lease must be divested is suspended for the duration of the sublease and will commence running again upon termination of the sublease; or

(6) entering into a transaction that does not qualify for disposal under subsection (h)(1)-(5) of this section; provided that its obligation to dispose of the OREO is not met until the trust company receives or accumulates from the purchaser an amount in cash, principal and interest payments, and private mortgage insurance totaling 10% of the sales price, as measured in accordance with regulatory accounting principles.

(j) Accounting for OREO. Investment in OREO, and disposition of OREO, must be accounted for in accordance with regulatory accounting principles.

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 October 9, 1998.

TRD-9815860

Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: December 11, 1998

For further information, please call: (512) 475-1300



Chapter 21. Trust Company Corporate Activities

Subchapter A. Fees and Other Provisions of General Applicability

7 TAC §21.2

The Finance Commission of Texas (the commission) proposes amendments to §21.2, regarding filing and investigation fees applicable to trust company notices and applications.

The purpose of the amendments is to improve cross-references to governing law and regulations as well as to authorize reduced fees for filings that qualify for expedited processing. The amendments are proposed in connection with proposed new sections governing certain applications, published in this issue of the *Texas Register*.

Everette Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections are the clarification of complex statutory standards to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by these sections.

Comments on the proposed sections may be submitted in writing to Everette D. Jobe, General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to everette.job@banking.state.tx.us.

The amendment is proposed under Texas Civil Statutes, Articles 342a-1.003(a)(4), which authorizes the commission to adopt rules to provide for recovery of the cost of maintenance and operation of the department and the cost of enforcing Texas Civil Statutes, Articles 342a-1.001 et seq, through the imposition and collection of ratable and equitable fees for notices, applications, and examinations.

Texas Civil Statutes, Articles 342a-3.012, 342a-3.101, 342a-3.302, and 342a-5.102 are affected by the proposal.

§21.2. Filing and Investigation Fees.

(a) (No change.)

(b) Filing fees. Simultaneously with a submitted application or notice, an applicant shall pay to the department:

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

(3) \$4,000 for an application to authorize a merger or share exchange pursuant to Texas Civil Statutes, Article 342a-3.302, and §21.64 of this title (relating to Application for Merger or Share Exchange), or \$2,500 for an expedited application if permissible pursuant to §21.63 of this title (relating to Expedited Filings);

(4)-(13) (No change.)

(14) \$1,500 for an application to authorize a reverse stock split subject to the substantive provisions of §21.92 [~~§15.122~~] of this title (relating to Amendment of Articles to Effect a Reverse Stock Split);

(15) (No change.)

(16) \$500 for an application to authorize acquisition of treasury stock pursuant to Texas Civil Statutes, Article 342a-5.102, and §21.91 [~~§15.121~~] of this title (relating to Acquisition and Retention of Shares as Treasury Stock);

(17) (No change.)

(18) \$1,000 for an application for trust company exemption pursuant to Texas Civil Statutes, Article 342a-3.012, and §21.24 of this title (relating to Exemptions For Trust Companies Administering Family Trusts);

(19)-(21) (No change.)

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

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

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815859

Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: December 11, 1998

For further information, please call: (512) 475-1300



Subchapter F. Application for Merger Conversion, or Sale of Assets

7 TAC §§21.61-21.64, 21.67-21.76

The Finance Commission of Texas (the commission) proposes new Subchapter F, §§21.61-21.64 and 21.67-21.76, concerning applications for mergers, conversions, and share exchange transactions, by or involving trust companies.

Effective September 1, 1997, Texas Civil Statutes, Articles 342a-1.001 et seq (the Texas Trust Company Act, §1.001 et seq), became the governing law for Texas-chartered trust companies. New regulations implementing this law require proposal and adoption. As part of this process, rules are needed regarding various corporate applications, notices, and approvals applicable to trust companies. The proposed rules are drawn from existing banking rules in Chapter 15 that will continue to apply to trust companies until the new proposals are adopted and become effective. Not currently proposed are §21.65 and §21.66, anticipated to concern purchase and sale of assets. These section numbers are reserved for future expansion. Purchases and sales of assets by and involving trust companies involve inherent complexities deserving of further study prior to proposal.

The sections as proposed set out application requirements and the information which must be included in an application; set publications standards; establish parameters for required opinions of counsel; define confidentiality provisions, and clarify the role of the banking commissioner in the approval process.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that, for each year of the first five years the new sections are in effect the public benefit anticipated as a result of enforcing the new sections is the clarification of statutory requirements to aid the industry in compliance. No net economic cost will result to persons required to comply with the proposed sections. No difference will exist between the cost of compliance for small businesses and the cost of compliance for the largest businesses affected by the sections.

Comments on the proposed sections may be submitted in writing to Sammie K. Glasco, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar Boulevard, Austin, Texas 78705-4294, or by e-mail to sammie.glasco@banking.state.tx.us.

The new sections are proposed under the Texas Trust Company Act, §1.003, which authorizes the commission to adopt rules to accomplish the purposes of the Act, to implement and clarify the Act, to preserve the safety and soundness of state trust companies, to grant the same rights and privileges to state trust companies with respect to the exercise of fiduciary powers that are or may be granted to a state or national bank that is domiciled in this state and exercising fiduciary powers, and to facilitate the fair hearing and adjudication of matters before the banking commissioner and the finance commission.

The Texas Trust Company Act, §§3.301-3.304 and 3.501, are affected by the proposed new sections.

§21.61. Definitions.

(a) Words and terms used in this subchapter that are defined in Texas Civil Statutes, Articles 342a-1.001 et seq, have the same meanings as defined therein.

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

(1) Annual report—Formal financial statements and accompanying narrative of management issued yearly for the benefit of shareholders and other interested parties.

(2) Chartering agency—A government authority that has chartering jurisdiction over an entity involved in a transaction under this subchapter.

(3) Corporation or domestic corporation—A corporation for profit subject to the provisions of the Texas Business Corporation Act, except a foreign corporation.

(4) Current financial statements— Audited financial statements dated as of a date not more than 180 days prior to the date of submission of an application, or unaudited financial statements dated as of a date not more than 90 days prior to the date of submission of an application.

(5) Fiduciary institution—A bank, savings association, savings bank, credit union, or other financial institution with the power to act as a fiduciary under applicable law.

(6) Low-quality asset—An asset as defined in 12 United States Code, §371c(b)(10), currently an asset that falls in any one or more of the following categories:

(A) an asset classified as "substandard," "doubtful," or "loss," or treated as "other loans especially mentioned" in the most recent report of examination or inspection of an affiliate prepared by either a federal or state supervisory agency;

(B) an asset in a nonaccrual status;

(C) an asset on which principal or interest payments are more than 30 days past due; or

(D) an asset whose terms has been renegotiated or compromised due to the deteriorating financial condition of the obligor.

(7) Material administrative proceeding—A past or pending proceeding by a state, federal, or foreign regulatory agency against the applicant or other person involved in a transaction under this subchapter that resulted in or could result in the issuance of a cease and desist, removal, enforcement action, determination letter or other order, including an order of supervision or conservatorship; excluding, however, a past proceeding that resulted in an order, other than a removal order, that has been satisfied or otherwise terminated more

than five years prior to the date the application or notice requesting such information is submitted.

(8) Material legal proceeding—

(A) a past or pending criminal proceeding against the applicant or other person involved in a transaction under this subchapter that resulted or may result in conviction of the applicant or other person of a crime under a state or federal law or the law of a foreign country relating to fiduciaries, banks or other financial institutions, securities, financial instrument reporting, or another crime involving moral turpitude; or

(B) a past or pending proceeding that has or may result in a judgment against the applicant or other person or entity involved in a transaction under this subchapter and the loss contingency must be disclosed in the financial statements of the entity under generally accepted accounting principles, or is otherwise material.

(9) Merger—A transaction that is:

(A) the division of a trust company into two or more new trust companies, fiduciary institutions, or other entities, or into a surviving trust company and one or more new trust companies, fiduciary institutions, or other entities; or

(B) the combination of one or more trust companies with one or more fiduciary institutions or other entities, resulting in:

(i) one or more surviving trust companies, fiduciary institutions, or other entities;

(ii) the creation of one or more new trust companies, fiduciary institutions, or other entities; or

(iii) one or more surviving trust companies, fiduciary institutions, or other entities and the creation of one or more new trust companies, fiduciary institutions, or other entities.

(10) Other entity—An entity, whether or not organized for profit, including a corporation, limited or general partnership, joint venture, joint stock company, cooperative, association, or another legal entity organized pursuant to the laws of this state or another state or country to the extent such laws or the constituent documents of that entity, consistent with such laws, permit that entity to enter into a merger or share exchange subject to this subchapter.

(11) Principal executive officer—An officer primarily responsible for the execution of board policies and operation of a trust company or other entity.

(12) Purchase of assets—The purchase other than in the ordinary course of business of all, substantially all, or a part of the assets of a trust company, fiduciary institution, or other entity, including but not limited to fiduciary rights pertaining to client accounts.

(13) Regulatory restriction—A memorandum of understanding, determination letter, notice of determination, order to cease and desist, or other state or federal administrative enforcement order issued by a state or federal banking regulatory agency, or another limitation imposed on a fiduciary institution or other entity by a state or federal banking regulatory agency that restricts its ability to act without authorization from the regulatory agency imposing the condition.

(14) Resulting trust company—A trust company that is a surviving or newly created entity in a merger.

(15) Sale of assets—The sale, lease, exchange, or other disposition of substantially all of the assets of a trust company,

including but not limited to fiduciary rights pertaining to client accounts, other than in the ordinary course of business.

(16) Share exchange—A transaction by which one or more trust companies, fiduciary institutions, or other entities acquire all of the outstanding shares of one or more classes or series of one or more trust companies under the authority of Texas Civil Statutes, Article 342a-3.301, and the Texas Business Corporation Act, Article 5.02.

(17) Trust company—A state trust company as defined by Texas Civil Statutes, Article 1.002(a)(46).

(18) Verified—Documents submitted by the applicant that have been attested to as true and correct, but not necessarily notarized.

§21.62. General.

Without the prior written consent of the banking commissioner, a trust company may not consummate a merger, conversion, sale of assets, purchase of assets, or share exchange. Except as otherwise provided by Texas Civil Statutes, Article 342a, Chapter 3, Subchapters D, E, and F, or this subchapter, an application must be filed with the banking commissioner for review and consideration of the proposed transaction.

§21.63. Expedited Filings.

(a) An eligible trust company as defined in §21.1(4) of this title (relating to Definitions) may file an expedited filing in lieu of an application required under §21.64 of this title (relating to Application for Merger or Share Exchange) and simultaneously tender the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees).

(b) An expedited filing consists of a letter application including, except to the extent waived by the banking commissioner, the following items:

(1) a summary of the transaction;

(2) a current pro forma balance sheet and income statement for all parties to the transaction, with adjustments, reflecting the proposed transaction as of the most recent quarter ended immediately prior to the filing of the application, demonstrating that each resulting trust company meets the statutory capital requirement or capital requirement imposed by order or condition of the banking commissioner. The pro forma must include a statement of fiduciary assets as well as corporate assets;

(3) an executed opinion of counsel conforming to the requirements of §21.64(b)(12) of this title;

(4) copies of all other required regulatory notices or filings submitted to other state or federal regulatory agencies concerning the transaction; and

(5) a copy of the public notice published in conformity with §21.64(d) of this title.

(c) The banking commissioner shall notify the applicant on or before a date that is 15 days after receipt of the application if expedited filing treatment is not available under this section for any reason. Such notification must be in writing and must indicate the reason expedited treatment is not available. Notification is effective when mailed by the banking commissioner and is not subject to appeal.

(d) The banking commissioner may deny expedited filing treatment to an eligible trust company if, in the exercise of discretion, the banking commissioner finds that the application involves one or more of the following:

(1) the proposed transaction involves significant policy, supervisory, or legal issues;

(2) approval of the proposed transaction is contingent on additional statutory or regulatory approval by the banking commissioner or another state or federal regulatory agency;

(3) the proposed transaction contemplates a resulting entity that is not an authorized fiduciary institution;

(4) the proposed transaction involves a fiduciary institution or other entity that is not domiciled in Texas;

(5) the proposed transaction would cause the corporate or fiduciary assets of a resulting trust company to increase by more than 100%;

(6) the proposed transaction involves a trust company that has experienced, since the last commercial examination by a state or federal regulatory agency, corporate or fiduciary asset growth, through acquisition or otherwise, greater than 100%; or

(7) a resulting fiduciary institution that is not "well capitalized" as defined in 12 Code of Federal Regulations, §325.103, or that will not meet capital requirements imposed by its principal regulator.

(e) The banking commissioner shall approve or deny an expedited filing on or before a date that is 30 days after the date the expedited filing is accepted for filing pursuant to §21.4 of this title (relating to Required Information and Abandoned Filings). The banking commissioner may, in the exercise of discretion, before the expiration of the period for decision, give the applicant written notice that the banking commissioner will convene a hearing to obtain evidence related to the application, and the decision will thereafter be made in accordance with §21.82 of this title (relating to Approval; Conditional Approval; Denial of Application; Hearings).

(f) The applicant bears the burden to supply all material information necessary to enable the banking commissioner to make a fully informed decision regarding the expedited filing.

§21.64. Application for Merger or Share Exchange.

(a) Scope. This section governs an application for merger or share exchange pursuant to Texas Civil Statutes, Articles 342a-3.301 et seq. This section does not apply to a merger that results in a trust company becoming another fiduciary institution under another regulatory system pursuant to Texas Civil Statutes, Article 342a-3.501, or other applicable law, and such transactions are governed by §21.67 of this title (relating to Merger, Reorganization, or Conversion of a Trust Company Into Another Fiduciary Institution).

(b) Form of application. The applicant shall submit a fully completed, verified application on a form prescribed by the banking commissioner and simultaneously tender the required filing fee pursuant to §21.2 of this title (relating to Filing and Investigation Fees). The application must, except to the extent waived by the banking commissioner, include the following information:

(1) a summary of the proposed transaction;

(2) a copy of all agreements related to the proposed transaction executed by an authorized representative of each party to the merger or share exchange;

(3) articles and plan of merger or share exchange in accordance with the Texas Business Corporation Act, Part V, which must include the following:

(A) a current draft of the articles of merger or share exchange, and such number of additional copies equal to the number

of surviving, new, or acquired entities, executed and acknowledged by an authorized officer for each party to the merger or share exchange;

(B) the plan of merger or share exchange;

(C) the articles or restated articles of association of each resulting trust company;

(D) the articles or restated articles of incorporation or association, or other constitutive documents, of each newly created or surviving entity other than a resulting trust company; and

(E) if a party to a merger is an entity required to file documents with the Texas secretary of state before the transaction can be legally consummated, a provision in the articles of merger conditioning the merger upon the approval of the banking commissioner, containing wording substantially as follows, as applicable: This merger shall become effective upon the final approval and filing of the articles of merger by the Secretary of State of Texas and with the Banking Commissioner of Texas which shall be on or before _____ (date), which is the 90th day after the date of filing of such articles of merger with the Secretary of State;

(4) for each party to the merger or share exchange, a certified copy of those portions of the minutes of board meetings and shareholder or participant meetings (or their equivalent) at which action was taken regarding approval of the merger or share exchange, or a certificate of an officer verifying the action taken by the board of directors and the shareholders or participants approving the merger or share exchange, or an explanation of the basis for concluding such action was not required;

(5) for each resulting trust company, an assessment of its future prospects, proposed officers and directors, and proposed offices and other locations;

(6) an assessment of the current regulatory and financial condition of each party to the transaction;

(7) a copy of current financial statements for each entity involved in the proposed transaction, accompanied by an affidavit of no material change dated no earlier than 30 days prior to the date of submission of the application;

(8) a copy of the latest annual report for each fiduciary institution and holding company involved in the proposed transaction;

(9) a copy of that portion of the most recent watch list for each fiduciary institution involved in the proposed transaction that identifies low-quality assets;

(10) a description of the due diligence review conducted by or for each trust company that is a party to the transaction and a summary of findings;

(11) a description of all material legal or administrative proceedings involving any party to the merger or share exchange;

(12) an opinion of legal counsel that conforms with §21.68 of this title (relating to Opinion of Legal Counsel), concluding the following:

(A) each resulting trust company will be solvent and will have adequate capitalization for its business and location;

(B) the merger or share exchange has been duly authorized by the board and shareholders or participants of each participating trust company, fiduciary institution, or other entity, including trust companies in accordance with applicable law;

(C) the merger or share exchange will not cause or result in a material violation of the laws of this state relative to the organization and operation of trust companies;

(D) all liabilities of each trust company that is a party to the merger or share exchange will be discharged or otherwise assumed or retained by a trust company or other fiduciary;

(E) each surviving, new, or acquiring entity that is not authorized to engage in the trust business will not engage in the trust business and has in all respects complied with the laws of this state;

(F) all conditions with respect to the merger or share exchange that have been imposed by the banking commissioner have been satisfied or otherwise resolved or, to the best knowledge of legal counsel, no such conditions have been imposed;

(13) a copy of each filing or application regarding the proposed merger or share exchange that is required to be made with another state or federal regulatory agency, complete with all related attachments, exhibits, and correspondence;

(14) a current pro forma balance sheet and income statement for each party to the transaction, with adjustments, reflecting the proposed merger or share exchange as of the most recent quarter ended immediately prior to the filing of the application. The pro forma must include a statement of fiduciary assets as well as corporate assets;

(15) for each resulting trust company, a copy of the strategic plan that complies with the banking commissioner's Memorandum 1009, including projections of the balance sheet and income statement of each resulting trust company as of the quarter ending one year from the date of the pro forma financial statement required by paragraph (14) of this subsection;

(16) an explanation of compliance with or nonapplicability of provisions of governing law relating to rights of dissenting shareholders or participants to the merger or share exchange;

(17) a copy of all securities offering documents, proxy statements, or other disclosure materials delivered or to be delivered to shareholders or participants of a party concerning the merger or share exchange;

(18) an explanation of the manner and basis of converting or exchanging any of the shares or other evidences of ownership of an entity that is a party to the merger or share exchange into shares, obligations, evidences of ownership, rights to purchase securities, or other securities of one or more of the surviving, acquiring, or new entities, into cash or other property, including shares, obligations, evidences of ownership, rights to purchase securities, or other securities of another person or entity, or into a combination of the foregoing;

(19) for antitrust purposes, an analysis of the anticipated competitive effect of the proposed transaction in the affected markets and a statement of the basis of the analysis of the competitive effects, or if applicable, a copy of the analysis of competitive effects of the proposed transaction addressed in a companion federal regulatory agency application; and

(20) such other information that the banking commissioner, in the exercise of discretion, requires to be included in the particular application as considered necessary to an informed decision to approve or deny the proposed merger or share exchange.

(c) Applicant's duty to disclose. The applicant bears the burden to supply all material information necessary to enable the

banking commissioner to make a fully informed decision regarding the application.

(d) Public notice. Within 14 days prior to or after submission of the initial application, the applicant shall publish notice in accordance with the requirements of §21.5 of this title (relating to Public Notice) in the specified communities where home office of the applicant, the target entity, and the resulting trust company are located.

(e) Approval by the banking commissioner and filings with a chartering agency.

(1) The banking commissioner shall approve a merger or share exchange only if the application indicates substantial compliance with all conditions of Texas Civil Statutes, Article 342a-3.302(c).

(2) If any party is required to file with its chartering agency after acceptance for filing pursuant to §21.4(b) of this title (relating to Required Information and Abandoned Filings), an applicant for merger or share exchange shall file the original articles of merger or share exchange as certified by the chartering agency with the banking commissioner.

(3) After approval of an application under this section by the banking commissioner, the articles of merger or share exchange previously filed with the chartering agency, if applicable, will be accepted and a certificate of merger or share exchange will be issued by the banking commissioner who shall perform the duties required by Texas Civil Statutes, Article 342a-3.303(a). With respect to a transaction that requires filing with the Texas secretary of state, if the banking commissioner does not approve the articles of merger or share exchange on or before the 90th day after the filing of the articles of merger with the Texas secretary of state, the applicant must refile the articles of merger or share exchange with both the Texas secretary of state and with the banking commissioner.

(4) After issuance of the certificate of merger or share exchange by the banking commissioner, the applicant shall file a statement with the chartering authority, if applicable, certifying that any future event upon which the effectiveness of the merger or share exchange was conditioned, has been satisfied and the date upon which the condition was satisfied.

(5) The date of issuance of the certificate of merger or share exchange by the banking commissioner constitutes the date of approval pursuant to Texas Civil Statutes, Article 342a-3.303(b), unless the merger or exchange agreement provides for a later effective date which has been approved by the banking commissioner.

§21.67. Notice of Merger, Reorganization, or Conversion of a Trust Company Into Another Fiduciary Institution.

(a) Scope. This section governs notice of the merger, reorganization, or conversion of a trust company into another form of fiduciary institution in a manner that results in extinguishment of the trust company charter, pursuant to Texas Civil Statutes, Article 342a-3.501, or other applicable law.

(b) Form of notice. A trust company does not cease to be subject to the jurisdiction of the banking commissioner until the banking commissioner is given written notice of intent to merge, reorganize, or convert into another form of fiduciary institution before the 31st day preceding the date of the proposed transaction and the merger, reorganization, or conversion has otherwise become effective. The notice must, except to the extent waived by the banking commissioner, include the following information:

(1) a summary of the proposed transaction;

(2) a copy of all agreements or other documentation related to the proposed transaction executed by an authorized representative of the applicant and other parties, if any;

(3) a copy of each filing regarding the proposed transaction that is required to be filed with other state or federal regulatory agencies, complete with all related attachments, exhibits, and correspondence;

(4) a certified copy of the relevant portions of the minutes of board meetings and shareholder or participant meetings (or their equivalent) at which action was taken regarding approval of the transaction, or a certificate of an officer verifying the action taken by the board of directors and the shareholders or participants approving the merger, reorganization, or conversion;

(5) Opinion of legal counsel. An opinion of legal counsel that conforms with the requirements of §21.68 of this title (relating to Opinion of Legal Counsel), concluding the following:

(A) the merger, reorganization, or conversion of the trust company has been duly authorized by its board and shareholders or participants in accordance with the Texas Business Corporation Act;

(B) all liabilities of the trust company will be discharged or otherwise retained by the successor fiduciary institution; and

(C) all conditions with respect to the merger, reorganization, or conversion imposed by the banking commissioner have been satisfied or otherwise resolved or, to the best knowledge of legal counsel, no such conditions have been imposed;

(6) a publisher's certificate showing publication of notice as required by subsection (c) of this section; and

(7) an explanation of compliance with the provisions of the Texas Business Corporation Act relating to rights of dissenting shareholders or participants.

(c) Notices, publication, and certificate of authority.

(1) The applicant shall submit a copy of the published notice of the proposed transaction required by the successor regulatory authority or shall publish notice as required by §21.5 of this title (relating to Public Notice). Submission of such notice, with the publisher's certificate required by subsection (b)(6) of this section, is considered notice of the transaction in accordance with Texas Civil Statutes, Article 3421-3.501(c)(2). The banking commissioner may require, upon written notice to the applicant, such other publication requirements at such times and places and in such manner as considered appropriate.

(2) Within 14 days after receipt of the certificate of authority to do business, or such other document issued by the successor regulatory authority that authorizes the consummation of the merger, reorganization, or conversion, the successor fiduciary institution shall provide written notice to the banking commissioner of the effective date and a copy of the certificate of authority or other document.

(d) Filing fees. A filing fee is not required in connection with notice under this section.

§21.68. Opinion of Legal Counsel.

(a) An opinion of legal counsel required by this subchapter must be addressed to the banking commissioner and state the opinions expressed, the specific documents reviewed and the matters considered of both law and fact, as legal counsel has considered

necessary or appropriate in the exercise of professional judgment for the opinions expressed, and the assumptions, qualifications, limitations, and exceptions made or taken with respect to the opinions expressed. A draft opinion may be submitted with an application under this chapter provided a final, signed opinion is delivered to the banking commissioner prior to final action on the application. Any variation in the final opinion from the draft version must be specifically called to the attention of the banking commissioner.

(b) An opinion letter required under this subchapter will be governed by and interpreted in accordance with the Third Party Legal Opinion Report, Including the Legal Opinion Accord, of the Section of Business Law (American Bar Association, 1991), available in pamphlet form as reprinted from the November 1991 issue of The Business Lawyer (Volume 47, Number 1, Page 167), (the Accord), or a successor document officially promulgated by an appropriate authority.

(c) Unless specifically noted in the opinion, the banking commissioner will assume that the opinions expressed are based upon and subject to the assumptions, qualifications, limitations and exceptions set forth in the Accord, provided the Accord is incorporated by reference. In addition, whether or not stated in the Accord, if specifically noted in the opinion, counsel:

(1) need not express an opinion as to the laws of the United States or a foreign jurisdiction unless such an opinion is specifically requested by the banking commissioner;

(2) may assume that the parties to the transaction have engaged only in activities provided in their respective constitutive documents, and that all surviving parties to the transaction will engage only in activities provided in their respective constitutive documents;

(3) may assume that the transaction will be consummated in accordance with its terms as disclosed in the application; and

(4) may qualify the opinions given as opinions solely for the benefit of the banking commissioner that may not be quoted in whole or in part or otherwise referred to in another document or report, and that may not be furnished to a person or entity other than the banking commissioner and the department without the written consent of counsel, except as may be permitted or required by law, including Texas Civil Statutes, Article 342a-2.101 et seq, and Government Code, Chapter 552.

(d) Legal counsel shall specifically notify the banking commissioner of any substantive deviation from the assumptions, qualifications, limitations and exceptions allowed in this section and the Accord, and any substantive deviation from the opinion requirements of the section of this subchapter that governs a particular application. Deviations may result in a processing delay of the application to the extent additional analysis is required to understand the purpose of the deviation. A substantive deviation from the requirements of this subchapter applicable to legal opinions that is not brought to the attention of the banking commissioner will be considered a material misrepresentation in the application.

(e) Legal counsel rendering an opinion under this subchapter shall be an attorney in good standing admitted to practice before the highest court of a state, territory or district of the United States. However, legal counsel shall be well versed and professionally competent in applicable Texas law, or should seek the advice and opinion of an attorney in good standing admitted to practice before the highest courts in this state if legal counsel may not properly and ethically render opinions regarding applicable Texas law. An opinion of local legal counsel must be disclosed if relied on by legal counsel.

(f) Legal counsel rendering an opinion under this subchapter shall be independent of the applicant, the notice provider, or another person or entity required to submit an opinion of counsel pursuant to this section. Legal counsel is considered independent if able to exercise independent professional judgment and render candid advice, whether in private practice or employed by an applicant.

§21.69. Rights of Dissenting Shareholders.

The rights of dissenting shareholders or participants to a transaction under this subchapter may be governed by the Texas Business Corporation Act or other applicable law relating to the rights of dissenters, and applicants shall provide evidence of compliance with or inapplicability of such provisions of law.

§21.70. Investigation of Application.

(a) Authority. An application under this subchapter is subject to such investigation as considered necessary, in the banking commissioner's sole discretion, in order to make an informed decision regarding an application.

(b) Costs and fees. An applicant under this subchapter shall pay reasonable costs incurred in the investigation including the cost of a required examination, as provided by §21.2 of this title (relating to Filing and Investigation Fees).

(c) Examinations. The banking commissioner may consider the following factors in determining whether to require an examination of one or more of the entities to the transaction:

(1) a question exists regarding the solvency or potential solvency of the applicant or one or more of the fiduciary institutions or other entities involved in the proposed transaction;

(2) a trust company or other fiduciary institution involved in the transaction has not been examined by a state, federal, or foreign regulatory agency within the 18-month period immediately preceding the date of submission of the application;

(3) a trust company or other fiduciary institution involved in the proposed transaction has numerous substantive violations cited in its last examination report, or has a less than satisfactory corporate or trust regulatory rating;

(4) a question exists regarding the experience, ability, standing, trustworthiness, or integrity of the existing or proposed officers, directors, managers or managing participants of a party involved in the proposed transaction;

(5) a question exists whether a resulting trust company will operate in compliance with the law;

(6) a question exists whether a resulting trust company will be free from improper or unlawful influence or interference from its principal shareholders with respect to operation in compliance with the law;

(7) a question exists whether a resulting trust company will have adequate capitalization;

(8) one or more of the parties to the transaction are under a regulatory restriction; or

(9) such other factors as determined in the sole discretion of the banking commissioner.

§21.71. Waiver of Requirements.

The banking commissioner, in the exercise of discretion, reserves the right to waive a requirement in this subchapter, unless specifically required by Texas Civil Statutes, Articles 342a-1.001 et seq, or other applicable provision of federal or state law.

§21.72. Approval; Conditional Approval; Denial of Application; Hearings.

(a) Approval, conditional approval, or denial. Except for as otherwise provided by §21.63 of this title (relating to Expedited Filings), the banking commissioner shall approve or deny an application filed under this subchapter on or before a date that is 60 days after the date the application is accepted for filing pursuant to §21.4 of this title (relating to Required Information and Abandoned Filings).

(b) Pre-decision hearing. The banking commissioner may, in the exercise of discretion, before the expiration of the initial period for decision provided by subsection (a) of this section, give the applicant written notice that the banking commissioner will convene a hearing to obtain evidence related to the application. Such notice by the banking commissioner suspends the specified period for approval or denial of an application, and the banking commissioner shall approve or deny the application on or before a date that is 30 days after the date the final proposal for decision resulting from the hearing is provided to the banking commissioner and the applicant.

(c) Acceptance of conditional approval. The banking commissioner may give the applicant written notice that the application has been approved subject to certain conditions. The applicant shall provide the banking commissioner with written confirmation of acceptance of the conditions on or before a date that is 10 days after the date of notification to the applicant of the conditional approval. An agreement between the applicant and the banking commissioner concerning conditional approval is enforceable against the applicant. In the event an applicant who has received conditional approval does not provide the banking commissioner with written confirmation as required by this subsection, consummation of the transaction constitutes confirmation of acceptance of the conditions imposed by the banking commissioner and is considered for all purposes an agreement enforceable against the applicant.

(d) Requests for hearing. An applicant may request a hearing on or before a date that is 30 days after the effective date of notice of denial or conditional approval of an application under this subchapter by the banking commissioner. The request for hearing must be in writing and state with specificity the reasons the applicant alleges that the decision of the banking commissioner is in error. The applicant has the burden of proof for each issue specified in the request for hearing. The request for hearing and the banking commissioner's decision to deny or condition the application will be made a part of the record.

(e) Hearings on denial of applications. Requests for hearing under this subchapter will be forwarded to the administrative law judge who shall enter appropriate orders and conduct the hearing on or before a date that is 60 days after the date the request for hearing was received, or as soon after that as is reasonably possible, under Chapter 9 of this title (relating to Rules of Procedure for Contested Case Hearings, Appeals, and Rulemaking) and the Government Code, Chapter 2001. A proposal for decision, exceptions and replies to such proposal for decision, the final decision of the banking commissioner, and motions for rehearing are governed by Chapter 9 of this title. An applicant may not appeal denial of an application or conditional approval of an application until a final order is issued. After a hearing and final order, the applicant may appeal the final order as provided in the Act, §31.202.

§21.73. Consummation of a Transaction.

A transaction under this subchapter must be consummated as proposed in the application, in the agreement concerning conditional approval, or as provided in a final order. An approved transaction under this subchapter must be consummated within 12 months after

the date of approval by the banking commissioner unless an extension is granted in writing. Until a transaction is consummated, the banking commissioner may alter, suspend, or withdraw approval should an interim development warrant such action.

§21.74. Notification.

A notification by the banking commissioner under this subchapter may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, mailed to the address furnished in the application. Notification may also be made in person to the applicant, or to the trust company or another person, fiduciary institution, foreign corporation or domestic corporation, or other entity subject to this subchapter, by agent-receipted delivery or by courier-receipted delivery to the address furnished in the application, or by telephonic document transfer to the applicant's telecopier number as furnished in the application. Notice by telephonic document transfer served after 6:00 p.m. local time of recipient is considered as notice served on the following day.

§21.75. Abandoned Filing.

The banking commissioner may determine an application under this subchapter to be abandoned pursuant to §21.4 of this title (relating to Required Information and Abandoned Filings).

§21.76. Confidentiality.

Information obtained by the banking commissioner under this subchapter is presumed to be public information unless such information is confidential under Texas Civil Statutes, Articles 342a-2.101 et seq, or under exceptions contained in Government Code, Chapter 552. The applicant has the burden to request confidential treatment for specified information, to segregate and mark documents claimed to be confidential, and to specifically reference the provision of law that allows confidential treatment.

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 October 9, 1998.

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Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: December 11, 1998

For further information, please call: (512) 475-1300



Subchapter G. Charter Amendments and Certain Changes in Outstanding Stock

7 TAC §21.91, §21.92

The Finance Commission of Texas (the commission) proposes new §21.91, concerning acquisition by a trust company of its own shares to be held as treasury stock, and new §21.92, concerning parameters and requirements for approval of a reverse stock split transaction by a trust company. The sections are proposed to be in new Subchapter G entitled Charter Amendments and Certain Changes in Outstanding Stock.

Treasury Stock Purchases

Under Texas Civil Statutes, Article 342a-5.102, a trust company may acquire its own shares to be held as treasury stock

without obtaining prior regulatory approval, provided the trust company has adequate undivided profits sufficient to absorb the acquisition of the shares under regulatory accounting principles. However, an acquisition of treasury stock by a trust company that is otherwise permissible under Texas Civil Statutes, Article 342a-5.102, may nevertheless violate other provisions of the Texas Trust Company Act (Texas Civil Statutes, Article 342a-1.001, et seq).

For example, under Texas Civil Statutes, Article 342a-3.103, a trust company may not reduce or increase its restricted capital without the prior approval of the banking commissioner, with certain limited exceptions. The purchase of treasury stock by a trust company could result in a decrease in the restricted capital of the trust company, depending on the accounting method used to record the transaction. In addition, Texas Civil Statutes, Article 342a-5.101(b) requires a trust company to invest and maintain an amount equal to at least 40% of its restricted capital in readily marketable investment securities. The purchase of treasury stock by a trust company could affect the trust company's liquidity and the requirements of Texas Civil Statutes, Article 342a-5.101(b). Finally, the purchase of treasury stock by a trust company that is subject to ratable increases in required capital under §17.1(b) of this title could result in a trust company failing to maintain the minimum required level in restricted capital set forth therein, or under an applicable capital maintenance plan under Texas Civil Statutes, Article 342a-3.007(b).

Accordingly, to protect the safety and soundness of trust companies, the proposed section will require all trust companies intending to acquire treasury stock to file, with the banking commissioner, a notice of intention to acquire treasury stock 30 days prior to the proposed consummation date. The banking commissioner may disapprove the proposed transaction if the plan will result in an acquisition of treasury stock at an aggregate cost in excess of its undivided profits, or if the plan of acquisition may otherwise threaten the adequacy of the trust company's liquidity or its equity capital, or could otherwise place the trust company in an unsafe or unsound condition.

With respect to any transaction that is consummated pursuant to the proposed section, a modest disclosure requirement is imposed on the trust company to deliver a copy of its annual report and certain information regarding recent transactions to the person from whom shares are being acquired. The banking commissioner will make no determination regarding the fairness of the price offered or accepted provided the required disclosures are made.

Trust companies may use the par value method or the cost method of accounting for treasury stock, as permitted by generally accepted accounting principles, although use of the cost method may avoid the reduction in restricted capital that would be required under the par value method. In addition, trust companies are reminded that treasury stock may not be voted, directly or indirectly, at any meeting of shareholders, and may not be counted in determining the total number of outstanding shares at any given time.

Reverse Stock Splits

In a typical reverse stock split transaction some number of issued shares are converted into a single share by means of an amendment to the articles of association, and a shareholder who holds fewer than the number designated to become a single share will, after the reverse stock split, hold a fraction of a

share. A common condition of such a transaction is that a fractional shareholder must accept cash for the fractional share at its fair value. Consequently, the device is favored by business corporations as a means of requiring minority shareholders to sell their shares to the corporation, thereby consolidating control in the hands of the majority shareholders. In some states, such transactions give rise to appraisal rights for dissenting shareholders in order to obtain a judicial determination of fair value, but not in Texas.

If appraisal rights apply to a transaction, such remedies are generally exclusive in the absence of fraud, see Texas Business Corporation Act (TBCA), Article 5.12(G). In the absence of appraisal rights, courts are generally more protective of the affected minority shareholders, and will require a business purpose independent of the mere desire to eliminate the minority shareholders in order to sanction the corporation's termination of the interest of such shareholders, see *Zauber v. Murray Savings Association*, 591 S.W.2d 932, 937-938 (Tex. Civ. App.—Dallas 1979, writ ref'd n.r.e.); *per curiam*, 601 S.W.2d 940 (Tex. 1980).

However, some have characterized the business purpose test as no more than a trap for the unskillful, requiring only a little imagination and proper planning and rhetoric on the part of lawyers in formulating a business reason for the transaction. Regardless of the label applied, the law appears to encourage a fair price and fair dealing for the minority shareholders and to discourage interference with the valid business purposes of the corporation itself, viewed as an entity distinct from the majority shareholders. Fair price must be determined by assessing all relevant factors to the corporation's economic and financial prospects, including its assets, market value, earnings, future prospects, and other elements that could affect the intrinsic or inherent value of a corporation's stock, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction. Fair dealing embraces questions of when the transaction was timed, how it was initiated, structured, negotiated, disclosed to the directors, and how the approvals of the directors and shareholders were obtained. The test for fairness is not that clearly bifurcated between fair dealing and fair price; a fair price is sufficient for finding fairness, regardless of some technical or minor failures with regard to fair dealing.

A Texas business corporation can engage in a reverse stock split. TBCA, Article 4.01, provides that a corporation can amend its articles of incorporation in any respect, provided its articles of incorporation as amended contain only lawful provisions. If a change in shares is to be made, the articles should also contain provisions necessary to effect the change. A reverse stock split constitutes such a change. Subject to the equitable considerations discussed in previous paragraphs, TBCA, Article 2.20, allows the corporation considerable leeway in dealing with fractional shares once the reverse stock split has been accomplished. A corporation may, for example, pay the fair value of fractional shares in lieu of distributing fractional shares. It may also issue scrip entitling the holder to receive a full share when the holder tenders enough scrip to equal a full share. Scrip may also be issued subject to conditions, including (i) that the scrip will become void if not exchanged for a certificate representing a full share before a specified date; (ii) that the corporation may sell the shares for which the scrip is exchangeable and distribute the proceeds to the holders of the scrip; or (iii) any other conditions the board of directors determines advisable.

Texas Civil Statutes, Article 342a-3.008, states that the TBCA applies to state trust companies to the extent not inconsistent with the Texas Trust Company Act or with the proper business of a trust company. Under Texas Civil Statutes, Article 342a-3.101, a trust company may amend its articles of association for any lawful purpose. TBCA, Article 4.01 and Article 2.20, when considered in light of judicially imposed, equitable restrictions, do not appear to be inconsistent with the Texas Trust Company Act. However, the agency believes that determinations of business purpose, fair pricing, and fair dealing must be demonstrated in connection with the application seeking regulatory approval of the proposed transaction. Litigation arising out of perceived unfairness to the minority shareholders has the potential to adversely affect the safety and soundness of the trust company.

Proposed §21.92 is based on and comparable to §15.122, applicable to state banks. Section 15.122 is applicable to trust companies until proposed §21.92 becomes effective.

The proposed section requires a trust company to make written disclosure to shareholders, prior to the shareholder vote on a proposed reverse stock split, of all material information necessary to an informed decision regarding the proposed transaction, specifically including specified information set forth in proposed §21.92(d). The agency believes this requirement does not impose a burden on state trust companies that is not already imposed by federal and state securities laws.

After approval by shareholders, a trust company is required to submit an application with accompanying documents to the banking commissioner as specified in proposed §21.92(e). Under proposed §21.92(f), the banking commissioner will require that the reverse stock split be for valid business purposes of the trust company, viewed as an entity distinct from its affiliates, and be accomplished through fair dealing with and a fair price to unaffiliated shareholders. As proposed, the banking commissioner may impose conditions on approval, including a condition that an independent appraisal report be obtained regarding the value of the unaffiliated shareholders' shares, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction, and without minority discount.

Proposed §21.92(e) exempts from the scope of the rule any reverse stock split that (i) will not result in fractional shares; (ii) that can reasonably be characterized as voluntary on the part of all shareholders, as specified in that subsection; (iii) or that is exempted by the banking commissioner on written application.

Everette D. Jobe, General Counsel, Texas Department of Banking, has determined that for the first five-year period the sections are in effect, there will be no fiscal implication for state or local government as a result of enforcing or administering the sections.

Mr. Jobe also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing these sections is increased flexibility for trust companies with regard to internal corporate governance, employee benefits, and capital formation, without risk to safety and soundness. No net economic cost will result to persons required to comply with the proposed sections, and there will be no effect on small businesses.

Comments on the proposed sections may be submitted in writing to Jeffrey L. Schrader, Assistant General Counsel, Texas Department of Banking, 2601 North Lamar

Boulevard, Austin, Texas 78705-4294, or by e-mail to jeff.schrader@banking.state.tx.us.

The sections are proposed under Texas Civil Statutes, Article 342a-1.003, which authorizes the commission to adopt rules necessary or reasonable to implement and clarify the Texas Trust Company Act (Texas Civil Statutes, Article 342a-1.001, et seq) and to preserve or protect the safety and soundness of trust companies.

Texas Civil Statutes, Articles 342a-3.103, 342a-4.101, 342a-5.101, and 342a-5.102 are affected by the proposed sections.

§21.91. Acquisition and Retention of Shares as Treasury Stock.

(a) Permitted acquisition of treasury stock. Pursuant to Texas Civil Statutes, Articles 342a-3.103, 342a-5.101, and 342a-5.102, a trust company may acquire its own shares to be held as treasury stock, if prior notice of the proposed transaction is filed with the banking commissioner pursuant to subsection (b) of this section and the plan of acquisition has not been disapproved by the banking commissioner pursuant to subsection (d) of this section.

(b) Notice filing. A trust company that desires to effect a treasury stock transaction shall file notice of its intention to enter into a plan of acquisition with the banking commissioner, setting forth or including as exhibits the following:

(1) consistent with subsection (g) of this section, the pro forma effects of the plan of acquisition on the trust company's liquidity and restricted and secondary capital, and disclosure of the basis for the calculations, including:

(A) the price or price range per share at which the shares will be acquired;

(B) the number of shares sought to be acquired, expressed as a maximum; and

(C) the source of funds for the acquisition;

(2) the date by which the plan of acquisition will be completed;

(3) a certified copy of a resolution duly adopted by the board of directors, approving the plan of acquisition; and

(4) a current draft of the securities offering document or other disclosure materials proposed to be delivered to shareholders considering the sale of the trust company's shares to the trust company.

(c) Consummation of plan of acquisition. If a notice of intention to acquire treasury stock filed under this section is not disapproved by the banking commissioner on or before the 30th day after the notice is complete and accepted for filing, the transaction may be consummated in the manner and in accordance with the terms set forth in the plan of acquisition. The banking commissioner may, before the expiration of the 30-day period, impose conditions on the plan of acquisition, including limitations on the number of shares to be acquired, the source of funds for the acquisition, or a condition that the transaction be consummated as of a specified date. A notification by the banking commissioner under this section may be by registered or certified mail, return receipt requested, and is complete when the notification is deposited in the United States mail postage prepaid, return receipt requested, addressed to the address furnished in the notice.

(d) Disapproval. The banking commissioner may disapprove the proposed plan of acquisition if the banking commissioner concludes that the trust company's plan of acquisition:

(1) will result in an acquisition of treasury stock at an aggregate cost in excess of its undivided profits;

(2) may threaten the adequacy of the trust company's liquidity and the requirements of Texas Civil Statutes, Article 342a-5.101(b);

(3) may threaten the adequacy of the trust company's equity capital or its restricted capital, or could result in a trust company failing to maintain the minimum required level in restricted capital set forth in Texas Civil Statutes, Article 342a-3.103, or §17.1(b) of this title; or

(4) could otherwise place the trust company in an unsafe or unsound condition.

(e) Compliance with securities law.

(1) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations, §240.10b-5, and *Spector v. L Q Motor Inns, Inc.*, 517 F.2d 278 (5th Cir. 1975), cert. denied, 423 U.S. 1055 (1976). Such a transaction is also subject to the antifraud provisions of state securities law, see Texas Civil Statutes, Article 581-33(B). Potential liability of the trust company to the selling shareholder can therefore arise if the trust company withholds or misrepresents material facts that the seller would have considered important in making the decision to sell.

(2) Any transaction consummated under subsection (c) of this section does not constitute a determination by the banking commissioner that the trust company has complied with applicable securities law.

(f) Retention of treasury stock. The banking commissioner may require a trust company to cancel and retire all or part of shares held as treasury stock to the status of authorized and unissued shares if the banking commissioner concludes that holding treasury stock in the amount held by the trust company creates safety and soundness or other regulatory concerns.

(g) Accounting for treasury stock. A trust company shall account for the acquisition and retention of treasury stock in accordance with generally accepted accounting principles under either the cost method or the par value method (see Accounting Research Bulletin Number 43), although use of the cost method may avoid the reduction in restricted capital that would be required under the par value method. The method used for accounting for treasury stock must be clearly reflected in the trust company's accounting records.

(h) Status of treasury stock. Shares held by a trust company as treasury stock may not be voted, directly or indirectly, at any meeting of shareholders, and may not be counted in determining the total number of outstanding shares at any given time.

§21.92. *Amendment of Articles to Effect a Reverse Stock Split.*

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

(1) Affiliate—For purposes of this section only, a person that directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with a trust company seeking to effect a reverse stock split. A person who is not an affiliate of the trust company at the commencement of its reverse stock split will not be considered an affiliate of the trust company prior to the completion of the reverse stock split.

(2) Appraisal report—A report, opinion (other than an opinion of counsel), or appraisal, prepared by an outside party, that

is materially related to the reverse stock split, including a report, opinion, or appraisal relating to the consideration or the fairness of the consideration to be offered to shareholders in connection with the reverse stock split or the fairness of such transaction to the trust company or to unaffiliated shareholders.

(3) Reverse stock split—An amendment to the articles of association of a trust company that achieves a reduction in the number of issued shares of such trust company by requiring exchange of all issued shares in a particular class for a proportionately smaller number of shares, generally with a proportionately increased par or stated value. The equity capital of the trust company remains substantially the same.

(4) Share—A unit representing ownership of at least part of the proprietary interests of a trust company, whether or not divided or subdivided by means of classes, series, relative rights, or preferences; and includes a stock or similar security; or a security convertible, with or without consideration, into such a security, or carrying a warrant or right to subscribe to or purchase such a security; or such warrant or right; or another security determined by the banking commissioner to be an equity security pursuant to Texas Civil Statutes, Article 342a-1.002(a)(4).

(5) Unaffiliated shareholder—A shareholder of a share subject to a reverse stock split who is not an affiliate of the trust company that issued the share.

(b) Procedure. Pursuant to Texas Civil Statutes, Article 342a-3.101, to effectuate a reverse stock split in compliance with this section, a trust company shall:

(1) obtain the approval of its shareholders as required by law; and

(2) obtain the approval of the banking commissioner pursuant to subsection (d) of this section, by filing an application setting forth the information and documents required by subsection (c) of this section and the filing fee required by §21.2 of this title (relating to Filing and Investigation Fees).

(c) Application. A trust company proposing a reverse stock split transaction shall file with the banking commissioner a written application seeking approval of the proposed amendment to its articles of association, stating the results of the vote of shareholders regarding the proposed reverse stock split and stating the percentage of shares of unaffiliated shareholders that were voted in favor of the proposed reverse stock split, or undertaking to supplement the application after conditional approval is obtained to provide shareholder approval information, setting forth or including as exhibits the following:

(1) the original and one copy of the proposed amendment to the articles of association, to be processed in the manner required by Texas Civil Statutes, Article 342a-3.101, and a description of the material terms of the proposed reverse stock split, including terms or arrangements relating to any shareholder of the trust company which are not identical to those relating to other shareholders of the same class;

(2) any plan or proposal of the trust company, regarding activities or transactions which are to occur after the reverse stock split which relate to or would result in:

(A) an extraordinary corporate transaction, such as a merger, reorganization, or liquidation, involving the trust company or any of its subsidiaries;

(B) a sale or transfer of a material amount of assets of the trust company or any of its subsidiaries;

(C) a change in the present board of directors or management of the trust company, including a plan or proposal to change the number or term of directors, to fill an existing vacancy on the board or to change a material term of the employment contract of an executive officer;

(D) a material change in the present dividend rate or policy or indebtedness or capitalization of the trust company;

(E) any other material change in the trust company's corporate structure or business;

(3) the corporate purpose or purposes of the trust company for the reverse stock split, and alternative means, if any, considered by the trust company to accomplish such purposes and the reasons for their rejection, and the reason for choosing the structure of a reverse stock split and for undertaking such transaction at this time;

(4) a certified resolution of the board of directors of the trust company approving the proposed amendment to the articles of association, accompanied by a statement whether or not the board of directors of the trust company reasonably believes that the reverse stock split is fair or unfair to unaffiliated shareholders that:

(A) identifies each director, if any, that dissented to or abstained from voting on the merits of the reverse stock split, and describes, if known to the trust company after making reasonable inquiry, the reasons for each dissent or abstention; and

(B) states the number and percentage of disinterested directors that voted in favor of the proposed reverse stock split;

(5) whether or not the trust company obtained an appraisal report and, if an appraisal report was obtained, a copy of the appraisal report. To the extent not addressed in the appraisal report, the trust company shall disclose:

(A) the identity, qualifications, and method of selection of the outside party that prepared the appraisal report, any material relationship between the outside party or its affiliates and the trust company or its affiliates which existed during the past two years or is mutually understood to be contemplated, and any compensation received or to be received as a result of such relationship;

(B) a summary of the performance of such appraisal report, including the procedures followed, the findings and recommendations, the bases for and methods of arriving at such findings and recommendations, instructions received from the trust company, and any limitation imposed by the trust company on the scope of the investigation; and

(C) whether such appraisal report will be made available for inspection and copying at the home office of the trust company during its regular business hours by any shareholder of the trust company or such shareholder's representative who has been so designated in writing;

(6) with respect to the class of shares to which the reverse stock split relates, the aggregate amount and percentage of shares beneficially owned by any pension, profit sharing, or similar plan of the trust company, and by each officer, director, principal shareholder, and subsidiary of the trust company;

(7) with respect to any purchases of such shares made by the trust company since the commencement of the trust company's second full fiscal year preceding the date of the application, the amount of such shares purchased, the range of prices paid for such shares, and the average purchase price for each quarterly period of the trust company during such period;

(8) to the extent known to the trust company after reasonable inquiry, any transaction in the class of shares subject to the proposed reverse stock split that was effected during the past 60 days by the trust company or by an officer, director, principal shareholder, or subsidiary of the trust company, including the identity of the person who effected the transaction, the date of the transaction, the amount of shares involved, the price per share, and where and how the transaction was effected;

(9) to the extent known to the trust company after reasonable inquiry, a description and/or a copy of any contract, arrangement, understanding, or relationship (whether or not legally enforceable) in connection with the reverse stock split between the trust company (or an officer, director, principal shareholder, or subsidiary of the trust company) and any person with respect to any shares of the trust company (including a contract, arrangement, understanding, or relationship concerning the transfer or the voting of any such shares, joint ventures, loan, or option arrangements, puts or calls, guaranties of loans, guaranties against loss or the giving or withholding of proxies, consents, or authorizations), naming the persons with whom such contracts, arrangements, understandings, or relationships have been entered into and giving the material provisions thereof, including such information for any of such shares that are pledged or otherwise subject to a contingency, the occurrence of which would give another person the power to direct the voting or disposition of such shares, except that disclosure of standard default and similar provisions contained in loan agreements need not be included;

(10) to the extent known to the trust company after reasonable inquiry, whether or not any officer, director, principal shareholder, or subsidiary of the trust company has made a recommendation in support of or opposed to the reverse stock split and, if so, the reasons for such recommendation;

(11) whether or not appraisal rights are being voluntarily accorded by the trust company to shareholders in connection with the reverse stock split and whether or not any provision has been or will be made to allow unaffiliated shareholders to obtain counsel or appraisal services at the voluntary expense of the trust company and, if so, a detailed description of such appraisal rights or counsel or appraisal services;

(12) a reasonably itemized statement of all expenses incurred or estimated to be incurred in connection with the reverse stock split, including filing fees, legal, accounting, and appraisal fees, solicitation expenses, and printing costs, and disclosure of the person who has paid or will be responsible for paying such expenses;

(13) the proxy statement furnished to shareholders of the trust company in connection with obtaining shareholder approval for the reverse stock split, or a draft of the proxy statement to be furnished to shareholders in the event approval of the banking commissioner is sought prior to a shareholder vote; and

(14) such other information that the banking commissioner requires to be included in the particular application as considered necessary to an informed decision to approve or reject the proposed amendment effectuating a reverse stock split.

(d) Standards for approval.

(1) The banking commissioner shall process the proposed reverse stock split in accordance with Texas Civil Statutes, Article 342a-3.101(d). The banking commissioner shall require that the reverse stock split be for a valid business purpose of the trust company, viewed as an entity distinct from its affiliates, and be accomplished through fair dealing with and a fair price to unaffiliated

shareholders. The banking commissioner may impose conditions on approval, including a condition that an independent appraisal report be obtained regarding the value of the unaffiliated shareholders' shares, exclusive of any element of value arising from the accomplishment or expectation of the proposed transaction, and without minority discount. Share value determined by an independent and properly prepared appraisal report that is fully disclosed to trust company shareholders or by the market price of publicly traded shares will be presumed to be a fair value unless extenuating circumstances to the contrary are specifically noted.

(2) In the event approval of the banking commissioner is obtained prior to approval by shareholders, the trust company shall file a statement with the banking commissioner certifying that any future event or condition upon which the approval of the transaction was conditioned has been satisfied and the date that each such condition was satisfied. Upon receipt of such statement, the banking commissioner shall file the approved amendment to the articles of association in accordance with Texas Civil Statutes, Article 342a-3.101(d).

(3) An issuer's purchase of its own shares is a transaction subject to the antifraud provisions of federal securities law, see 15 United States Code, §78j, 17 Code of Federal Regulations (CFR), §240.10b-5, and *Spector v. L Q Motor Inns, Inc.*, 517 F.2d 278 (5th Cir. 1975), *cert. denied*, 423 U.S. 1055 (1976). Such a transaction is also subject to the antifraud provisions of state securities law, see Texas Civil Statutes, Article 581-33(B). Potential liability of the trust company to the selling shareholder can therefore arise if the trust company withholds or misrepresents material facts that the seller would have considered important in making the decision to sell. Consequently, a trust company must disclose to the shareholders in writing, prior to or simultaneously with the written notice of the shareholders meeting, all material information necessary to an informed decision regarding the proposed reverse stock split. If the reverse stock split involves publicly traded shares and is subject to 15 CFR, §240.13e-3, the registration statement required by federal law is considered to satisfy this disclosure obligation. Approval of an application under this section by the banking commissioner does not constitute a determination that the trust company has complied with applicable securities law.

(e) Exemptions.

(1) This section does not apply to a reverse stock split that:

(A) will not result in fractional shares;

(B) permits each shareholder to choose to cash in the resulting fractional share by selling it to the trust company or to round up to the next highest whole share by purchasing fractional interests, provided that:

(i) the specified sale and purchase prices are equivalent and reasonable; and

(ii) no fractional share resulting from the reverse stock split is less than 10% of a full share;

(C) is adopted by means of a unanimous written consent of shareholders; or

(D) the banking commissioner expressly exempts after written application as not within the purposes of this section.

(2) An amendment to the articles of association that implements a reverse stock split exempt from this section is filed

and processed in accordance with Texas Civil Statutes, Article 342a-3.101.

(3) The availability of an exemption from the requirements of this section does not relieve a trust company from its obligation to comply with applicable securities law.

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

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815857

Everette D. Jobe

General Counsel

Texas Department of Banking

Proposed date of adoption: December 11, 1998

For further information, please call: (512) 475-1300

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TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter L. Evidence and Exhibits in Contested Cases

16 TAC §22.222, §22.225

The Public Utility Commission of Texas proposes amendments to §22.222 relating to Official Notice and §22.225 relating to Written Testimony and Accompanying Exhibits. Project Number 17709 has been assigned to this proceeding. The proposed amendments conform §22.222 to the Administrative Procedure Act §2001.090, amend subsection (c) to reflect current commission practice, and amends §22.225 to update citations to the Public Utility Regulatory Act as codified in the Texas Utilities Code

Paula Mueller, deputy chief, Office of Regulatory Affairs, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Mueller has determined that for each year of the first five years the proposed sections are in effect the public benefits anticipated as a result of enforcing the sections will be rules that more accurately reflect statute and commission practice. There will be no effect on small businesses as a result of enforcing these sections. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

Ms. Mueller has also determined that for each year of the first five years the proposed sections are in effect there will be no impact on employment in the geographic area affected by implementing the requirements of the sections.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas

78711-3326, within 30 days after publication. The Appropriations Act of 1997, House Bill 1, Article IX, §167 requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist. The commission invites specific comments regarding whether the reason for adopting these sections continues to exist in considering the proposed amendments. All comments should refer to Project Number 17709 and reference Procedural Rules, Subchapter L.

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

§22.222. *Official Notice.*

(a) Facts noticeable. Official notice may be taken of judicially cognizable facts not subject to reasonable dispute in that they are generally known within the jurisdiction of the commission or capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. In addition, official notice may be taken of generally recognized facts within the area of the commission's specialized knowledge. The specialized skills or knowledge of the commission and its staff may be used in evaluating the evidence.

(b) (No change.)

(c) Notification of materials proposed to be noticed. The presiding officer may [~~propose to~~] take official notice of facts, material, records or documents authorized by APA, 2001.090. The parties shall be notified [~~in advance~~] of the facts, material, records or documents proposed to be officially noticed and shall be given the opportunity to contest the proposed action.

(d) (No change.)

§22.225. *Written Testimony and Accompanying Exhibits.*

(a) Prefiling of testimony, exhibits, and objections.

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

(6) The testimony pre-filing schedule in a major Public Utility Regulatory Act, Chapter 36, Subchapter C or E, or Chapter 53, Subchapter C or E [~~PURA §2.212 or §3.211~~] rate proceeding shall be established as set out in this subsection.

(A)-(C) (No change.)

(7) The presiding officer shall establish a pre-filing schedule for Public Utility Regulatory Act, Chapter 36, Subchapter D or Chapter 53, Subchapter D [~~PURA, §2.211 or §3.210~~] rate cases and for cases other than major rate proceedings. In proceedings that are not major rate proceedings, notice of intent proceedings, applications for certificates of convenience and necessity for new generating plant, or applications for fuel reconciliations, the applicant is not required to prefile written testimony and exhibits at the time the filing is made unless otherwise required by statute or rule.

(8)-(9) (No change.)

(b)-(e) (No change.)

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

Filed with the Office of the Secretary of State, on October 9, 1998.

TRD-9815881

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 936-7308



Part VIII. Texas Racing Commission

Chapter 301. Definitions

16 TAC §301.1

The Texas Racing Commission proposes amendments to §301.1 relating to definitions in conjunction with its review of this chapter pursuant to the requirements of the Appropriations Act of 1997, House Bill 1, Article IX, Section 167. In accordance with Section 167, the Commission has reviewed this chapter and has determined that it should be readopted, in part, with changes to the above-referenced section. The Commission finds that the reasons for this chapter with the proposed changes, continue to exist.

The proposed amendments eliminate definitions which are defined in the same manner in the Texas Racing Act. The proposed amendments eliminate definitions of words and terms that are not used in the Texas Racing Commission Rules (Rules). Words and terms that are used in the Rules and are not defined have been added. Amendments to definitions are proposed to provide consistency between the words and their use.

In addition, a memorandum which outlines each change to this chapter can be obtained from Roselyn Marcus, General Counsel for the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080, or telephone number (512) 833-6699.

Roselyn Marcus, General Counsel for the Texas Racing Commission, has determined that for the first five-year period the rule as amended is in effect there will be no fiscal implications for state or local government as a result of enforcing the proposal.

Ms. Marcus has also determined that for each of the first five years the rule as amended is in effect the public benefit anticipated as a result of enforcing the proposal will be that the definition of words and terms as used in the Rules will be clear to the public and licensees. There will be consistency in the use of words and terms throughout the Rules. There will be no fiscal implications for small businesses. There is no anticipated economic cost to an individual required to comply with the proposal. The proposal has no effect on the state's agricultural, horse breeding, horse training, greyhound breeding, or greyhound training industries.

Comments on the proposal may be submitted on or before November 20, 1998, to Roselyn Marcus, General Counsel for

the Texas Racing Commission, P.O. Box 12080, Austin, Texas 78711-2080.

The amendment is proposed under the Texas Civil Statutes, Article 179e, §3.02, which authorizes the Commission to adopt rules for conducting racing with wagering and for administering the Texas Racing Act; §6.06, which authorizes the Commission to adopt rules on all matters relating to the operation of racetracks; §11.01, which authorizes the commission to adopt rules to regulate pari-mutuel wagering on greyhound and horse races; and §11.011, which authorizes the commission to adopt rules to implement pari-mutuel wagering on simulcasting races.

The proposal implements Texas Civil Statutes, Article 179e.

§301.1. *Definitions.*

(a) Words and terms defined in the Act shall have the same meaning when used in this part unless otherwise defined below.

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

(1) Act - The Texas Racing Act, Article 179e, Texas Civil Statutes.

~~{Added money - money added by or through an association to the purse for a race.}~~

(2) Age of a greyhound - determined as beginning on the day the greyhound is whelped.

(3) Age of a horse - determined as beginning on the first day of January in the year in which the horse is foaled.

~~{Applicant - a person with a legal, equitable, or beneficial interest in a license application.}~~

(4) Application documents - documents submitted by an applicant for a license in support of the [an] application.

(5) Application period - a period designated by the commission for the submission of application documents for a racetrack license.

~~{Association - a person licensed by the commission to conduct a horse or greyhound race meeting.}~~

(6) Association grounds - all real property approved by the commission for use by an association in the conduct of a race meeting.

(7) Association veterinarian - a veterinarian employed by the association.

(8) Authorized agent - a person appointed in writing by the owner or trainer of a horse or greyhound to represent the owner or trainer at a racetrack.

(9) Backstretch - the straightaway on the side of a track that is opposite to the finish line.

(10) Booking - a contract between an association and a kennel owner for the kennel owner to provide greyhounds to the association for a race meeting and for the association to provide kennel buildings to house the greyhounds.

(11) Branding - the act of a totalisator system imprinting a mutuel ticket with information that identifies the ticket as canceled or cashed and automatically making the appropriate notation in the system's memories.

~~{Breakage - the odd cents by which the amount payable on each dollar wagered exceeds a multiple of 10 cents, except in the event of a minus pool, in which case the breakage is based on multiples of five cents.}~~

(12) Canceled ticket - a mutuel ticket that represents a wager that has been canceled and withdrawn from the pari-mutuel pool.

(13) Cashed ticket - a mutuel ticket that is paid for a winning wager.

(14) Chief veterinarian - the chief veterinarian employed by [an employee of] the commission [responsible for the supervision of veterinary practices and drug testing at racetracks].

~~{Commission - the Texas Racing Commission.}~~

(15) Common pool - a pool in which the wagers received at a receiving location are combined with the wagers received at a sending racetrack.

~~{Comptroller - the State Comptroller of Public Accounts.}~~

~~{Concessionaire - a person licensed by the commission to sell refreshments or other products to patrons at a racetrack.}~~

(16) Condition of a race - a characteristic element of the race, such as the distance, qualifications of animal to enter, purse or stakes, or other special features.

~~{Cool out - an employee of a kennel owner who feeds and cares for the greyhounds.}~~

~~{Corporation - an incorporated entity, either for profit or not for profit.}~~

(17) Coupled entry - two or more horses entered in a race that, because of common ties of ownership are joined to be a single betting interest in that race.

~~{Credential - a license, certificate, identification card, or other document indicating or representing authority or permission under the Act.}~~

(18) Cushion - the top level of a dirt racetrack.

(19) Dead heat - a race in which two or more race animals finish at the same time.

(20) Declaration - the withdrawal of an entered horse or greyhound from a race.

(21) Double entry - an entry of two or more greyhounds in the same race that have either common ownership or the same trainer and are separate wagering interests.

~~{Enclosure - the areas of an association's grounds to which admission can be obtained only on payment of an admission fee or presentation of official credentials.}~~

(22) Encrypted - scrambled or otherwise manipulated audio-visual signals to mask the original video content of the signal to cause the signals to be indecipherable and unrecognizable to any person receiving the signal.

(23) Entry - a horse, or horses in the case of a coupled entry, made eligible to run in a race.

(24) Established weight - the racing weight for a greyhound established in accordance with the rules of the commission.

~~{Executive secretary - the executive secretary of the commission.}~~

(25) Exempt institutional investor - an investor who is:

(A) an insurance company as defined by the Securities Act of 1933, §2(13), a bank as defined by that Act, §3(a)(2), a savings and loan association or other institution referenced in that Act, §3(a)(5)(A), or a foreign bank or savings and loan association or equivalent institution;

(B) an investment company as defined by the Investment Company Act of 1940, §3(a), an issuer that would have been deemed an investment company under that Act except for the exclusion in that Act, §3(c)(1), or a business development company as defined by that Act, §2(c)(48);

(C) a small business investment company licensed by the United States Small Business Administration under the Small Business Investment Act of 1958, §301(c) or (d);

(D) a plan established and maintained by a state, its political subdivisions, or an agency or instrumentality of a state or its political subdivisions for the benefit of its employees;

(E) an employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974;

(F) a trust fund whose trustee is a bank or trust company and whose participants are exclusively plans of the types identified in subparagraph (D) or (E) of this definition, except trust funds that include as participants individual retirement accounts or H.R. 10 plans;

(G) a business development company as defined by the Investment Advisers Act of 1940, §202(a)(22), or an investment adviser registered under that Act;

(H) an organization described in the Internal Revenue Code, §501(c)(3);

(I) a dealer registered under the Securities Exchange Act of 1934, §15;

(J) a legal entity with a market value of at least \$50 million whose securities are traded on a nationally recognized or foreign securities exchange or interdealer quotation system, such as NASDAQ; and

(K) a legal entity, acting for its own account or the account of other exempt institutional investors, that in the aggregate owns and invests on a discretionary basis at least \$25 million in securities of issuers that are not affiliated with the entity, with the aggregate value of the securities being the cost of the securities, except if the entity reports its securities holdings in its financial statements based on their market value and no current information regarding the cost of the securities has been published, in which case the securities may be valued at market.

(26) Exotic pool - a mutual pool that involves wagers on more than one entered horse or greyhound or on entries in more than one race.

(27) False start - failure of the starting gate or box doors to open simultaneously.

(28) Foul - an action by a horse or jockey that hinders or interferes with another horse or jockey during the running of a race.

(29) Greyhound race - a contest among greyhounds for purse, stakes, premium, or wager for money, run in the presence of the racetrack officials, including the following:

(A) Hurdle race - a race over a course in which jumps or hurdles are used.

(B) Match race - a race between two or more greyhounds, each the property of different owners, on terms agreed on by the owners and approved by the commission.

(C) Overnight race - a race for which entries close 96 hours or less before the time set for the first race of the day on which the race is to be run.

(D) Purse race - a race for money or other prize to which the owners of the greyhounds engaged in the race do not contribute an entry.

(E) Race on the flat - a race over a course in which no jumps or other obstacles are placed.

(F) Stakes race - a race in which all money is to be deposited by the owners of the greyhounds engaged in the race, including a race of the day on which the stakes race is to be run.

(30) Groom - an individual employed by an owner or trainer of a race horse to tend to the physical appearance of the horse and to perform chores in and around the stable.

(31) Growing medium - the substance immediately below the grass on a turf track.

(32) Handle - the total amount of money wagered at a racetrack during a particular period.

(33) Horse - an equine of any breed, including a stallion, gelding, mare, colt, filly, or ridgling.

(34) Horse Race - a running contest between horses for entry fees, purse, prize, or other reward, including the following:

(A) Claiming race - a race in which a horse may be claimed in accordance with the rules of the commission.

(B) Derby race - a race in which the first condition of eligibility is to be three years old.

(C) Futurity race - a race in which the first condition of eligibility is to be two years old.

(D) Guaranteed race - a race for which the association guarantees by its conditions a specified purse, which is the limit of its liability.

(E) Handicap race - a race in which the weights to be carried by the entered horses are adjusted by the racing secretary for the purpose of equalizing their respective chances of winning.

(F) Match race - a race between only two horses that are owned by different owners.

(G) Maturity race - a race in which the first condition of eligibility is to be four years of age or older.

(H) Optional claiming race - a claiming race in which there is an option to have ~~restricted to~~ horses entered to be claimed for a stated price or not eligible to be claimed ~~and those entered to be claimed by the option designated in the conditions of the race~~.

(I) Progeny race - a race restricted to the offspring of a specific stallion or stallions.

(J) Purse or overnight race - a race for which owners of horses entered are not required by its conditions to contribute money toward its purse.

(K) Stakes race - a race to which nominators of the entries contribute to a purse.

(L) Starter race - an overnight race under allowance or handicap conditions, restricted to horses which have previously started for a designated claiming price or less, as stated in the conditions of the race.

(M) Walkover race - a stakes race in [fœr] which only one horse starts or all the starters are owned by the same interest [of the owners who has nominated a horse for a race qualifies the horse to start].

(N) Weight for age race - a race in which weights are assigned in keeping with the scale of weights in these rules.

(35) In today horse - a horse that is in the body of a race program which is entered into a race on the next consecutive race day.

~~[Individual licensee - an individual to whom the commission has issued a license to participate in racing with pari-mutuel wagering.]~~

~~[Jockey or Apprentice - a professional rider licensed by the commission to ride race horses.]~~

(36) Kennel area - an area on association grounds for the boarding or training of greyhounds.

(37) Lead out - an individual who handles a greyhound from the lockout kennel to the starting box.

~~[Live pari-mutuel pool - the total amount of money wagered by patrons on the result of a particular live race or combination of live races within the enclosure of the racetrack association where the race is being run.]~~

(38) Locked in the gate - a horse or greyhound that is prevented from leaving the starting gate or box due to the failure of the front door of the gate or box to open simultaneously with the other doors.

(39) Lure - a mechanical apparatus at a greyhound racetrack consisting of a stationary rail installed around the track, a motorized mechanism that travels on the rail, and a pole that is attached to the mechanism and extends over the track, and to which a decoy is attached.

(40) Maiden - a horse or greyhound that has never won a race at a recognized race meeting authorized by the commission or by another racing jurisdiction.

(41) Minus pool - a pool in which there are insufficient net proceeds to pay the minimum price to holders of the winning tickets.

~~[Mixed meet - a live horse race meeting in which more than one breed of horse participates.]~~

~~[Mixed race - a horse race in which more than one breed of horse participates.]~~

~~[Multiple wager - a wager on more than one animal entered in a race or a wager on more than one race.]~~

(42) Mutuel field - a group of horses joined as a single betting interest in a race due to the limited numbering capacity of the totalisator.

~~[National historic district - a district included in or eligible for inclusion in the National Register of Historic Places created under the National Historic Preservation Act, 16 U.S.C. §470 et seq.]~~

(43) No race - a race that is canceled after being run due to a malfunction of [at] the starting gate or box or any other applicable reason as determined by the rules of the commission.

(44) Nominator - the person in whose name a horse or greyhound is entered for a race.

(45) Occupational licensee - an individual to whom the commission has issued a license to participate in racing with pari-mutuel wagering.

(46) Odds - a number indicating the amount of profit per dollar wagered to be paid to holders of winning pari-mutuel tickets.

(47) Odds board - a facility at a racetrack that is easily visible to the public on which odds, payoffs [pay-offs], advertising, or other pertinent information is posted.

(48) Off time - the moment when, on signal from the starter, the horses or greyhounds break from the starting gate or box and run the race.

~~[Outstanding ticket - a pari-mutuel ticket that is not presented for payment before the end of the race day for which the ticket was purchased.]~~

(49) Paddock - the area in which horses or greyhounds gather immediately before a race.

~~[Pari-mutuel pool - the total amount of money wagered on a particular race or combination of races, to be divided into separate pools for win, place, show, or other combinations.]~~

~~[Pari-mutuel wagering - the form of wagering on the outcome of a greyhound or horse race in which all wagers for each race are pooled and held by the association for distribution of the total amount, less the deductions authorized by law, to holders of tickets on the winning animals.]~~

(50) Patron - an individual present on association grounds during a race meeting who is eligible to wager on the racing.

(51) Pecuniary interest - Includes a beneficial ownership interest in an association, but does not include bona fide indebtedness or a debt instrument of an association.

(52) Performance - the schedule of horse or greyhound races run consecutively as one program.

~~[Person - an individual or entity capable of holding a legal or beneficial interest in property.]~~

(53) Photofinish - the system of recording pictures or images [taking photographs] of the finish of a race to assist in determining the order of finish.

(54) Place - to finish second in a race.

(55) Post position - the position assigned to a horse or greyhound in the starting gate or box.

(56) Post time - the time set for the arrival at the starting gate or boxes by the horses or greyhounds in a race.

(57) Purse - the cash portion of the prize for a race.

(58) Race date - a date on which an association is authorized by the commission to conduct races.

(59) Race day - a day in which a numerical majority of scheduled races is conducted and is a part of the association's allocated race days.

(60) Race meeting - a group of days on which horse or greyhound racing is conducted at a racetrack.

~~{Racetrack - a facility at which horse or greyhound racing is conducted.}~~

(61) Racetrack facility - the buildings, structures and fixtures located on association grounds used by an association to conduct horse or greyhound racing.

(62) Racetrack official - an individual appointed or approved by the commission to officiate at a race meeting.

(63) Racing judge - the executive racing official at a greyhound track.

(64) Reasonable belief - a belief that would be held by an ordinary and prudent person in the same circumstances as the actor.

~~{Receiving location - a licensed racetrack association in this state that has been allocated live and simulcast race dates or a facility not located in this state that is authorized to conduct wagering under the law of the jurisdiction in which it is located.}~~

(65) Recognized race meeting - a race meeting held under the sanction of a turf authority ~~[having reciprocal relations with the commission for the mutual enforcement of rulings imposed on licensees].~~

(66) Refunded ticket - a pari-mutuel ticket that has been refunded for the value of a wager that is no longer valid.

~~{Regular wager - a wager on a single horse or greyhound in a single race.}~~

(67) Rule off - to bar an individual from the enclosure of an association and to deny all racing privileges to the individual.

(68) Rules - the rules adopted by the Texas Racing Commission found in Title 16, Part VIII of the Texas Administrative Code.

(69) Schooling race - a practice race conducted under actual racing conditions but for which wagering is not permitted.

(70) Scratch - to withdraw an entered horse or greyhound from a race after the closing of entries.

(71) Scratch time - the closing time set by an association for written requests ~~[closing applications]~~ to withdraw from a race.

~~{Sending track - a licensed track for racing in this state or out-of-state from which a race is transmitted.}~~

(72) Show - to finish third in a race.

~~{Simulcast - the telecast or other transmission of live audio and visual signals of a race, transmitted from a sending track to a receiving location, for the purpose of wagering conducted on the race at the receiving location.}~~

~~{Simulcast pari-mutuel pool - the total amount of money wagered by patrons at a licensed racetrack association in Texas on the result of a particular simulcast race or combination of simulcast races.}~~

(73) Specimen - a bodily substance, such as blood, urine, or saliva, taken for analysis from a horse, greyhound, or individual in a manner prescribed by the commission.

(74) Stakes payments - the fees paid by subscribers in the form of nomination, entry, or starting fees to be eligible to participate [to an Added money or stakes race].

(75) Stallion owner - a person who is owner of record, at the time of conception, of the stallion that sired the accredited Texas-bred horse.

(76) Starter - a horse or greyhound entered in a race when the ~~[stall]~~ doors of the starting gate or box open in front of the horse or greyhound at the time the official starter dispatches the horses or greyhounds.

~~{Steward - a racing official with general authority and supervision over:}~~

~~{(A) the conduct of a licensed race meeting; and}~~

~~{(B) all licensees at a racetrack during a race meeting.}~~

(77) Straight pool - a mutuel pool that involves wagers on a horse or greyhound to win, place, or show.

(78) Subscription - money paid to nominate, enter, or start a horse or greyhound in a stakes race.

(79) Tack room - a room in the stable area of a horse racetrack in which equipment for training and racing the horses is stored.

(80) Totalisator - a machine or system for registering and computing the wagering and payoffs in pari-mutuel wagering.

(81) Tote room - the room in which the totalisator equipment is maintained.

(82) Tout - an individual licensed to furnish selections on a race in return for a set fee.

~~{Trainer - a person employed by the owner of a race animal to condition the animal for racing.}~~

(83) Trial - a race designed primarily to determine qualifiers for finals of a stakes race ~~[the class of the competing horses].~~

(84) Uplink - an earth station broadcasting facility, whether mobile or fixed, which is used to transmit audio-visual signals and/or data emanating from a sending racetrack, and includes the electronic transfer of received signals from the receiving antenna to TV monitors within the receiving location.

(85) Weigh in - the process by which a jockey is weighed after a race or by which a greyhound is weighed before being placed in the lockout kennel.

(86) Weighing in weight - the weight of a greyhound on weighing in to the lockout kennel.

(87) Weigh out - the process by which a jockey or greyhound is weighed before a race.

(88) Weighing out weight - the weight of a greyhound on weighing out of the lockout kennel immediately before post time for the race in which the greyhound is entered.

(89) Win - to finish first in a race.

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 October 5, 1998.

TRD-9815448
Roselyn Marcus
General Counsel
Texas Racing Commission

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TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Subchapter L. Anesthesia and Anesthetic Agents

22 TAC §109.172

The State Board of Dental Examiners proposes amendments to §109.172, concerning definitions.

Douglas A. Beran, Executive Director, State Board of Dental 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 the rule.

Mr. Beran 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 that §109.172 clarifies certain definitions relative to administration of anesthesia.

There will be no effect on small and large businesses and on persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Mei Ling Clendennen, Executive Assistant, State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 463-6400. To be considered all comments must be received by the State Board of Dental Examiners on or before November 24, 1998.

The amended rule is proposed under Texas Government Code §2001.021 et. seq.; Texas Civil Statutes, Article 4543 §2 and 4551d which provide the State Board of Dental Examiners with the authority to adopt and promulgate rules consistent with the Dental Practice Act.

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

§109.172. Definitions.

The following words and terms, when used in subchapter L, Anesthesia and Anesthetic Agents [~~this chapter~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Analgesia - the diminution or elimination of pain [~~or production of increased tolerance to pain in the conscious patient~~].

(2) Competent - displaying special skill or knowledge derived from training and experience.

(3) [~~Parenteral~~] Conscious Sedation - a minimally depressed level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and verbal command, and that is produced by a pharmacologic or non-pharmacologic method, or a combination thereof. In accord with this particular definition, the drugs and/or techniques used should carry a margin of safety wide enough to render unintended loss of consciousness unlikely. Further, patients whose only response is reflex withdrawal from repeated painful stimuli would not be considered to be in a state of conscious sedation.

(4) Continual - repeated regularly and frequently in a steady succession.

(5) Continuous - prolonged without any interruption at any time.

(6) [~~Parenteral~~] Deep Sedation - an induced[~~A Controlled~~] state of depressed consciousness accompanied by partial loss of protective reflexes, including the inability to continually maintain an airway independently and/or respond purposefully to verbal command, and is produced by a pharmacological or non-pharmacological method, or a combination thereof.

(7) Direct supervision - the dentist responsible for the sedation/anesthesia procedure shall be physically present in the office and shall be continuously aware of the patient's physical status and well being.

(8) Enteral - any technique of administration in which the agent is absorbed through the gastrointestinal (GI) tract or oral mucosa (i.e., oral, rectal, sublingual).

(9) Facility - the primary office where a permit holder practices dentistry and provides anesthesia services.

(10) Facility inspection - an on-site inspection to determine if a facility is supplied, equipped, staffed, and maintained in a condition to support provision of anesthesia services that meet the minimum standard of care; may be required by the State Board of Dental Examiners prior to the issuance of an anesthetic permit or any time during the term of the permit if the holder of or applicant for a permit owns or operates a primary facility or satellite facility.

(11) General anesthesia - an induced [~~A controlled~~] state of unconsciousness accompanied by partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or [~~to~~] verbal command, and is produced by a pharmacological or non-pharmacological method or a combination thereof.

(12) Immediately available - on-site in the facility and available for immediate use.

(13) Inhalation - a technique of administration in which a gaseous or volatile agent is introduced into the pulmonary tree and whose primary effect is due to absorption through the pulmonary bed (e.g. nitrous oxide/oxygen sedation).

(14) Local anesthesia - the elimination of sensations, especially pain, in one part of the body by the [~~topical application~~ ~~or~~] regional injection of a drug.

(15) May [~~or could~~] - indicates freedom or liberty to follow a reasonable [~~suggested~~] alternative.

(16) Must or shall - indicates an imperative need and/or duty; an essential or indispensable item; mandatory.

(17) Nitrous Oxide/oxygen inhalation conscious sedation - the administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient's ability to independently and continuously maintain an airway and respond appropriately to physical stimulation and/or verbal command.

(18) Parenteral - a technique of administration in which the drug bypasses the gastrointestinal (GI) tract, i.e., intramuscular (IM), intravenous (IV), intranasal (IN), submucosal (SM), subcutaneous (SC).

(19) Patient Physical Status Classification:

- (A) ASA - American Society of Anesthesiologists.
- (B) ASA I - a normal health patient.
- (C) ASA II - a patient with mild systemic disease.
- (D) ASA III - a patient with severe systemic disease.
- (E) ASA IV - a patient with severe systemic disease that is a constant threat to life.

(F) ASA V - a moribund patient who is not expected to survive without the operation.

(G) ASA VI - a declared brain-dead patient whose organs are being removed for donor purposes.

(H) E - emergency operation of any variety (used to modify the ASA I - ASA VI).

(20) Personal supervision - the provider [dentist] responsible for the sedation/ anesthesia procedure shall be physically present in the room with the patient at all times during the induction and maintenance of the procedure.

(21) Portability - the ability of a permit holder to provide permitted anesthesia services in a location other than a facility or satellite facility.

(22) Satellite facility - an additional office or offices owned or operated by the permit holder, or owned or operated by a professional organization through which the permit holder practices dentistry, or a licensed hospital facility.

(23) Should - indicates the recommended manner to obtain the standard; highly desirable.

(24) Time-oriented anesthesia record - documentation at appropriate intervals of drugs, doses and physiologic data obtained during patient monitoring.

(25) Topical Anesthesia - the elimination of sensations, especially pain, in one part of the body by the topical application of a drug.

(26) Transdermal/transmucosal - a technique of administration in which the drug is administered by patch or iontophoresis.

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 *, 1998.

TRD-9815685

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-6400



Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

22 TAC §461.31

The Texas State Board of Examiners of Psychologists proposes an amendment to §461.31, concerning Abolition Date for Psychological Associate Advisory Committee Set for September 1,

2005; Board Review of Psychological Associate Advisory Committee. The amendment is being proposed in order to ensure compliance with the statutory mandate of Texas Government Code, §2110.001-2110.008, by stating the purpose and describing the tasks of the Committee and by clarifying the manner in which the Committee reports to the Agency.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to ensure that the Psychological Associate Advisory Committee has a clearly stated purpose and definitive tasks as required by §2110.005, and to ensure that all workings of the Committee are presented to the agency in a timely manner. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§461.31. Psychological Associate Advisory Committee (the PAAC) [Abolition Date for Psychological Associate Advisory Committee Set for September 1, 2005; Board Review of Psychological Associate Advisory Committee.]

(a) The purpose of the PAAC is to develop and recommend rules to the Board for its consideration as provided in Section 19A of the Act.

(b) The PAAC's sole function is to develop and recommend rules to the Board pertaining to the following areas:

(1) the license qualifications for licensed psychological associates;

(2) the supervision requirements for licensed psychological associates practicing less than five years;

(3) the permitted activities and services within the practice of licensed psychological associates;

(4) the schedule of disciplinary actions required by Section 23(b) of the Act that apply to licensed psychological associates;

(5) the continuing education requirements for licensed psychological associates;

(6) the proportional billing guidelines for services rendered by licensed psychological associates with less than five years experience; and

(7) the guidelines, including additional educational requirements, for practice with minimal supervision for licensed psychological associates with five or more years of experience.

(c) Operations of the PAAC.

(1) The PAAC is limited to performing only the function stated in the rules promulgated by the Board concerning the PAAC and operations and acts directly pertaining to the performance of that function.

(2) Neither the PAAC nor its members, when acting in their capacity as members of the PAAC, shall issue oral or written comments, press releases, articles or publications, or any other communications to any person, organization or entity other than the Board or the staff of the Board.

(3) Correspondence necessary to the performance of the function of the PAAC shall be drafted and mailed by the staff of the Board after approval by the Executive Director of the Board.

(4) The Board shall make the final determination as to whether a particular operation or act directly pertains to the performance of the function of the PAAC as delineated by the Board.

(5) Any operation or act taken by the PAAC or its members found to be outside of its function shall have no effect and is voidable by the Board.

(d) The PAAC shall designate one of its members to present a recommended rule, the PAAC's rationale for the rule, and any supporting materials, to the Board either orally or in writing at a regularly scheduled meeting of the Board.

(e) Annual Review. [The abolition date for the Psychological Associate Advisory Committee is hereby set for September 1, 2005.] The Board shall annually review the PAAC's [Committee's] work, the PAAC's [Committee's] usefulness and the costs related to the PAAC's [Committee's] existence, including the cost of agency staff time spent in support of the PAAC's [Committee's] activities in conjunction with the Board's budgeting process.

(f) Abolition Date. The abolition date for the Psychological Associate Advisory Committee is hereby set for September 1, 2005.

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 October 9, 1998.

TRD-9815885

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: November 22, 1998

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



Chapter 463. Applications

22 TAC §463.6

The Texas State Board of Examiners of Psychologists proposes an amendment to §463.6, concerning Experience. The amendment is being proposed in order to clarify that as required by Section 21(a)(2) of the Psychologists' Licensing Act, at least one year of the two years of supervised experience required to qualify for licensure, must have been received by an applicant after the date on which the applicant's doctoral degree was conferred.

Sherry L. Lee, Executive Director, 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 the section.

Ms. Lee 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 to enable licensees and consumers of psychological services to better understand and track the training requirements for licensed psychologists. There will be no effect on small businesses. There will be no anticipated economic cost to persons who are required to comply with the section as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§463.6. Supervised Experience Required for Licensure as a Psychologist.

In order to qualify for licensure, a psychologist must submit proof of two years of supervised experience, at least one year of which must have been received after the doctoral degree was officially conferred and at least one year of which must have been a formal internship which meets the requirements set forth in paragraphs (2) or (3) of this section. The formal internship year may be met either before or after the doctoral degree is conferred.

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

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

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815886

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: November 22, 1998

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



Chapter 471. Renewals

22 TAC §471.5

The Texas State Board of Examiners of Psychologists proposes an amendment to §471.5, concerning Updated Information Requirements. The amendment is being proposed in order to insert a word that was inadvertently omitted in a prior revision.

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

Ms. Lee also has determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of enforcing the rule will be to make the rules

easier to understand and follow by the general public and by all licensees. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

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

The amendment is proposed under Texas Civil Statutes, Article 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to make all rules, not inconsistent with the Constitution and Laws of this State, which are reasonably necessary for the proper performance of its duties and regulations of proceedings before it.

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

§471.5. Updated Information Requirements.

Each licensee shall provide the following information when renewing his/her license each year:

- (1)-(4) No change.

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

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815887

Sherry L. Lee

Executive Director

Texas State Board of Examiners of Psychologists

Earliest possible date of adoption: November 22, 1998

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



Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Subchapter A. General Professional Ethics

22 TAC §573.1

The Texas Board of Veterinary Medical Examiners proposes amendments to §573.1, concerning Avoidance of Conflicting Interest. The amendments clarify the language of the rule to insure that the prohibition against representing conflicting interests and the exceptions permitted by express consent of the parties are clearly stated.

Mr. Ron Allen, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Allen also has determined that for the first five years the amendments are in effect that the public benefit anticipated as a result of enforcing the amendments is that veterinarians will clearly understand when arrangements involve a conflict of interest. The amendments impose no additional duties on small businesses, and thus there will be no economic effect on small businesses. The clarification of language does not

create any additional duties for veterinarians, and thus there is no anticipated economic cost to persons required to comply with the amendments as proposed.

Written comments on the proposal may be submitted in writing to Mr. Chris Kloeris, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 2-330, Austin, Texas 78701-3998, phone: (512) 305-7555, and must be received by January 15, 1999.

The amendment is proposed under the authority of the Veterinary Licensing Act, Texas Civil Statutes, article 8890, §8(a) which grants the Board the authority to amend rules of professional conduct in order to establish a high standard of integrity in the practice of veterinary medicine.

The amendment affects the Veterinary Licensing Act, article 8890, §14 which allows the Board to impose disciplinary measures if a licensee violates the rules of professional conduct.

§573.1. Avoidance of Conflicting Interest.

A veterinarian shall not [It is unprofessional and a violation of these sections to] represent conflicting interests [interest], except by express consent of all concerned given after a full disclosure of the facts. A veterinarian [Within the meaning of this section, a member] represents conflicting interests [interest] if, when employed by a buyer to inspect an animal for soundness, the veterinarian [he or she] accepts a fee from the seller. Acceptance of a fee from both the buyer and seller is prima facie evidence of fraud.

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 October 7, 1998.

TRD-9815640

Ron Allen

Executive Director

Texas Board of Veterinary Medical Examiners

Proposed date of adoption: February 4, 1999

For further information, please call: (512) 305-7555



TITLE 28. INSURANCE

Part I. Texas Department of Insurance

Chapter 5. Property and Casualty Insurance

Subchapter E. Texas Windstorm Insurance Association

Division 1. Plan of Operation

28 TAC §5.4008

The Texas Department of Insurance proposes amendments to §5.4008, concerning building code specifications in the plan of operation of the Texas Windstorm Insurance Association (Association or TWIA). The commissioner has adopted on an emergency basis amendments to §5.4008 under Commissioner's Order Number 98-1025, effective September 3, 1998, and this proposal will, upon adoption, supersede the amendments which were adopted pursuant to an emergency. Created in 1971 by the Texas Legislature as the Texas Catastrophe Property Insur-

ance Association, the Association is composed of all insurers authorized to transact property insurance in Texas and operates pursuant to Article 21.49 of the Insurance Code. The Texas Legislature in H.B. 1632 (Acts 1997, 75th Leg., ch. 438, §1, eff. Sept. 1, 1997) changed the name of the Texas Catastrophe Property Insurance Association to the Texas Windstorm Insurance Association. The purpose of the Association is to provide windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market. Since its inception, the Association has provided this coverage to residents of 14 coastal counties, including Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Refugio, San Patricio and Willacy. The Association also provides coverage to certain designated catastrophe areas in Harris County, including (i) effective March 1, 1996, the area located east of a boundary line of State Highway 146 and inside the city limits of the City of Seabrook and the area located east of the boundary line of State Highway 146 and inside the city limits of the City of La Porte (Commissioner's Order No. 95-1200, November 14, 1995); (ii) effective June 1, 1996, the City of Morgan's Point (Commissioner's Order No. 96-0380, April 5, 1996); and (iii) effective April 1, 1997, in areas located east of State Highway 146 and inside the city limits of the City of Shoreacres and the City of Pasadena (Commissioner's Order No. 97-0225, March 11, 1997). The Association's plan of operation specifies in §5.4008 the applicable building code standards to qualify for coverage from the Association as required by Article 21.49, §6A of the Insurance Code for structures located in designated catastrophe areas which were constructed, repaired, or to which additions are made on and after September 1, 1998, the effective date of the Building Code for Windstorm Resistant Construction (the code), adopted by reference in §5.4008(a) pursuant to Commissioner's Order No. 98-0803. The proposed amendments are necessary to (i) expand the standards and specifications of the code to provide additional prescriptive construction methods to be used in the construction, repair and additions of buildings located in the designated catastrophe areas to increase the building options available to the building industry and consumers; (ii) provide an exemption for application of the code to historical structures located in the designated catastrophe areas; and, (iii) make editorial and non substantive changes.

The proposed amendments are a result of recommendations by the Building Code Advisory Committee to expand the available use of the code in the designated catastrophe areas. Article 21.49 §6A(f), Insurance Code, requires the commissioner to appoint a Building Code Advisory Committee (advisory committee) to advise and make recommendations to the commissioner on building specifications in the TWIA plan of operation for structures to be eligible for windstorm and hail insurance through the TWIA. Article 21.49, §6A(f) requires that the advisory committee be composed of one representative of the TWIA, a representative of the residential building industry in the catastrophe area, a representative of municipal building officials in the catastrophe area, a registered professional engineer who resides in the catastrophe area with knowledge of building codes, a representative of the commissioner, a county commissioner or county judge, and other persons as may be deemed appropriate by the commissioner. Pursuant to Texas Revised Civil Statutes, Article 6252-33, 28 TAC §5.4002 was adopted (Commissioner's Order No. 94-0183 (February 18, 1994)) to specify the advisory com-

mittee's purpose and scope, tasks, reporting requirements, and composition and duration.

After adoption of the code by the commissioner under Commissioner's Order No. 97-0626, dated June 30, 1997, the department staff developed a training program on the use of the code and provided training and educational seminars to the building industry in the designated catastrophe areas. During those training sessions, comments and recommendations for improving the code were solicited from the training participants. These comments and recommendations were provided to the advisory committee for review at an advisory committee meeting on May 20, 1998. The advisory committee requested the department staff to proceed with developing the recommended changes for inclusion into the existing code and to provide the advisory committee members the final recommended changes at the next advisory committee meeting. The advisory committee met on July 31, 1998 to consider the proposed recommendations presented by the department staff and unanimously voted to recommend the code changes for the commissioner's consideration.

The proposed amendments to the code are as follows:

A. Throughout the code, references to the Texas Catastrophe Property Insurance Association (TCPPIA) are changed to Texas Windstorm Insurance Association (TWIA) and references to Texas registered professional engineers are changed to Texas licensed professional engineers to be consistent with the current changes in the Texas Engineering Practice Act.

B. Section 100, General Requirements: Editorial changes are made in this section to simplify and clarify inspection procedures by the department and to change the references to inspection forms used by the department which have been adopted under a separate rule. Editorial changes are made to the simplified wind pressures to clarify applicable building types.

C. Section 200, Basic Definitions, Assumptions, and Limitations of the Prescriptive Code.

1. 201, Applicability. A new exemption is added to this section to exempt historical structures from the requirements of the code. Historical structures are defined as those structures which are listed or eligible to be listed in the National Register of Historic Places or listed as a Recorded Texas Historic Landmark or designated by official action of a legally constituted municipal or county authority as having special historical and architectural significance and is at least 50 years old. This section also clarifies that the prescriptive requirements are intended primarily for wind resistant construction.

2. 207, Limitations on the Prescriptive Code. Editorial changes are made to define mean roof height and to clarify the maximum allowable wall height. Illustrations are added to show mean roof height and building height limitations. Expanded limitations for building dimensions and roof span limitations for one- and two-story buildings are added to increase the number of buildings eligible to be constructed using the prescriptive building code.

3. 208, Design Loads. Non substantive editorial changes are made to clarify and simplify the requirements contained in this section of the code.

4. 211, Materials. A reference is added to indicate that properly graded finger-jointed lumber is an acceptable material to be used in the construction of a structure subject to the new code. Specifications for gypsum wallboard are added to be consistent with references to other specifications of

building materials. Clarifications and specifications are added for corrosion resistant standards for fasteners and metal framing connectors.

D. Section 300, Prescriptive Requirements, Area Inland of the Dividing Line.

1. 301, Foundations. A clarification provides that the structural requirements for reinforcement in the grade beams are for uplift resistance only. The dimensions and reinforcement requirements for grade beams are revised. New options and equivalencies are added for welded wire fabric, such as synthetic fiber reinforcement. The amount of cover required for reinforcement in the grade beams is added to the code and clarification of the requirements for tying reinforcing rebar for masonry wall anchorage is also added to the code. Additional alternatives and minimum design requirements are included for other anchorage systems to substitute for anchor bolts in slabs. The pile foundation section is reorganized for clarity. The requirements for bolts to beam and pile connections are improved.

2. 302, Floor Framing. The blocking requirements for floor joists are eliminated as unnecessary. A new option is added for the fastening of the floor sheathing to the floor framing.

3. 303, Wood Stud Wall Framing. A new exception is added to allow recessed front entryways with loadbearing walls in excess of 10 feet. A clarification is added for the species of lumber that can be used for loadbearing walls and an option is added for the use of lower grade lumber for the trimmer and cripple studs and for the use of standard grade lumber for top plates. Clarifications are added for the requirements and application for uplift resistance for each wall stud and cripple stud. The application of anchorage requirements for framing around openings is clarified. The uplift resistance tables for wall studs and framing around openings is expanded for larger roof spans. The requirements and application for the construction of the garage door returns is clarified and the use of No. 2 Southern Pine and glue-laminated beams for the garage door headers is included. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. The wall bracing section is revised to clarify the use of a minimum shearwall segment along exterior walls, to provide options for fasteners for gypsum wallboard, to permit the use of single studs at the end of shearwall segments, to provide options for alternative sheathing applications, to include an exception to the minimum shearwall segment for recessed front entryways and to address sheathing requirements for gable endwalls. An optional provision is added to address the use of sheathing for wall bracing and uplift resistance along with the use of structural panels exclusively for uplift resistance. Holddown capacities are revised and capacities have been added for buildings with a wall height of 9 feet. Illustrations are added or revised to clarify the use of sheathing for shear transfer and to clarify the use and installation of shear transfer framing anchors. Bolt dimensions are clarified for use in anchoring of chimney framing.

4. 304, Masonry Walls. The minimum shearwall segments at any location on the structure are clarified in the code. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. Illustrations are revised to clarify the application of shearwall segments and to clarify the definition of pier height. A new

section is added to address interior walls, both wood frame and masonry construction, in a masonry building.

5. 305, Ceiling Framing. A clarification is added regarding the application of bracing in the ceiling joist section of the code. A clarification is added to indicate the acceptable locations of bracing in gable endwalls. The existing illustration for wall studs at a gable endwall is revised to show uplift connections of the top plate to the wall stud.

6. 306, Roof Framing. New options are added to specify rafter span options for tile roofs and for ceilings that are attached and not attached to rafters. A new option is provided for hip splices. Location of rafter bracing and purlins is clarified, and the minimum ridge board requirements are clarified along with a clarification of the species and grade of lumber used for ridge boards. The span table for ridge beams is revised to comply with deflection limitations. An option is included for replacing collar ties with ridge straps. The illustration showing the correct lap for ceiling joists is revised. A clarification for the application of ridge straps is included and a clarification to address thrust loads on rafters where a structure has a cathedral ceiling is also added. The minimum thickness of sheathing is clarified to be of an inch. The uplift resistance table is expanded for larger roof spans. The blocking requirements for roof decking at gable endwalls when balloon framing is used are eliminated as unnecessary.

7. 307, Roof Coverings. The application of the metal drip edge on a composition roof is clarified and the methodology for the application of asphalt plastic cement to composition shingles at the eaves and at the gable ends is also clarified. The slope limitation and nailing requirements for a composition roof are also clarified.

8. 308, Exterior Openings. Wind pressure options are added for doors, windows and garage doors. Fastener requirements for garage doors and exterior windows are clarified. The requirements for wind pressure are added for skylights, which were not included in the existing code.

9. 309, Exterior Coverings. A clarification is added that the underlayment requirements for wood structural panel siding can be either building paper or an equivalent moisture barrier. A clarification is added to stipulate that various board sidings and brick veneer cannot be used for lateral load resistance. Requirements for turbine and ridge vents are added to outline the wind load specifications.

10. 310, Mechanical and Exterior Equipment. A clarification is added that where lumber is exposed, such lumber must be treated lumber.

11. 311, Miscellaneous Construction. It is clarified that this section also addresses manufactured awnings in addition to patio covers. Illustrations are added for construction of supported overhangs and covered porches. Specifications are added for species and grade of lumber for the support beams and posts for supported overhangs and covered porches. Span requirements for support beams are revised to comply with deflection requirements. The allowable dimensions for supported overhangs and covered porches are expanded, and the uplift load requirements have been revised. A clarification is also added regarding overhang limitations.

12. 312, Reroofing a Wood Shingle or Shake Roof. A new option is added to provide for the application of structural sheathing over space boards.

E. Section 400, Prescriptive Requirements, Area Seaward of Established Dividing Line.

1. 401, Foundations. A clarification is added that the structural requirements for reinforcement in the grade beams are for uplift resistance only. The dimensions and reinforcement requirements for grade beams are revised. New options and equivalencies are added for welded wire fabric, such as synthetic fiber reinforcement. The amount of cover required for reinforcement in the grade beams is added to the code and clarification of the requirements for tying reinforcing rebar for masonry wall anchorage is also added to the code. Additional alternatives and minimum design requirements are included for other anchorage systems to substitute for anchor bolts in slabs. The pile foundation section is reorganized for clarity. The requirements for bolts to beam and pile connections are improved.

2. 402, Floor Framing. The blocking requirements for floor joists are eliminated as unnecessary. A new option is added for the fastening of the floor sheathing to the floor framing.

3. 403, Wood Stud Wall Framing. A new exception is added to allow recessed front entryways with loadbearing walls in excess of 10 feet. A clarification is added for the species of lumber that can be used for loadbearing walls and an option is added for the use of lower grade lumber for the trimmer and cripple studs and for the use of standard grade lumber for top plates. Clarifications are added for the requirements and application for uplift resistance for each wall stud and cripple stud. The application of anchorage requirements for framing around openings is clarified. The uplift resistance tables for wall studs and framing around openings is expanded for larger roof spans. The requirements and application for the construction of the garage door returns is clarified and the use of No. 2 Southern Pine and glue-laminated beams for the garage door headers is included. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. The wall bracing section is revised to clarify the use of a minimum shearwall segment along exterior walls, to provide options for fasteners for gypsum wallboard, to permit the use of single studs at the end of shearwall segments, to provide options for alternative sheathing applications, to include an exception to the minimum shearwall segment for recessed front entryways and to address sheathing requirements for gable endwalls. An optional provision is added to address the use of sheathing for wall bracing and uplift resistance along with the use of structural panels exclusively for uplift resistance. Holddown capacities are revised and capacities have been added for buildings with a wall height of 9 feet. Illustrations are added or revised to clarify the use of sheathing for shear transfer and to clarify the use and installation of shear transfer framing anchors. Bolt dimensions are clarified for use in anchoring of chimney framing.

4. 404, Masonry Walls. The minimum shearwall segments at any location on the structure are clarified in the code. Wall bracing tables are revised to include minimum length of shearwalls for buildings with roof spans up to 48 feet. Illustrations are revised to clarify the application of shearwall segments and to clarify the definition of pier height. A new section is added to address interior walls, both wood frame and masonry construction, in a masonry building.

5. 405, Ceiling Framing. A clarification is added regarding the application of bracing in the ceiling joist section of the code.

A clarification is added to indicate the acceptable locations of bracing in gable endwalls. The existing illustration for wall studs at a gable endwall is revised to show uplift connections of the top plate to the wall stud.

6. 406, Roof Framing. New options are added to specify rafter span options for tile roofs and for ceilings that are attached and not attached to rafters. A new option is provided for hip splices. Location of rafter bracing and purlins is clarified, and the minimum ridge board requirements are clarified along with a clarification of the species and grade of lumber used for ridge boards. The span table for ridge beams is revised to comply with deflection limitations. An option is included for replacing collar ties with ridge straps. The illustration showing the correct lap for ceiling joists is revised. A clarification for the application of ridge straps is included and a clarification to address thrust loads on rafters where a structure has a cathedral ceiling is also added. The minimum thickness of sheathing is clarified to be of an inch. The uplift resistance table is expanded for larger roof spans. The blocking requirements for roof decking at gable endwalls when balloon framing is used are eliminated as unnecessary.

7. 407, Roof Coverings. The application of the metal drip edge on a composition roof is clarified and the methodology for the application of asphalt plastic cement to composition shingles at the eaves and at the gable ends is also clarified. The slope limitation and nailing requirements for a composition roof are also clarified.

8. 408, Exterior Openings. Wind pressure options are added for doors, windows and garage doors. Fastener requirements for garage doors and exterior windows are clarified. The requirements for wind pressure are added for skylights which were not included in the existing code. It is clarified that exterior opening systems must meet wind pressure requirements in addition to either being designed to resist or protected from impact by windborne debris. A new, prescriptive option for impact protective systems is added to the code using wood structural panels for application to wood frame construction. This new option can be used in lieu of proprietary products, such as shutters or impact resistant windows, outlined or specified in the department's product evaluation reports.

9. 409, Exterior Coverings. A clarification is added that the underlayment requirements for wood structural panel siding can be either building paper or an equivalent moisture barrier. A clarification is added to stipulate that various board sidings and brick veneer cannot be used for lateral load resistance. Requirements for turbine and ridge vents are added to outline the wind load specifications.

10. 410, Mechanical and Exterior Equipment. A clarification is added that where lumber is exposed, such lumber must be treated lumber.

11. 411, Miscellaneous Construction. Clarified that this section also addresses manufactured awnings in addition to patio covers. Illustrations are added for construction of supported overhangs and covered porches. Specifications are added for species and grade of lumber for the support beams and posts for supported overhangs and covered porches. Span requirements for support beams are revised to comply with deflection requirements. The allowable dimensions for supported overhangs and covered porches are expanded, and the uplift load requirements have been revised. A clarification is also added regarding overhang limitations.

12. 412, Reroofing a Wood Shingle or Shake Roof. A new option is added to provide for the application of structural sheathing over space boards.

F. Appendices.

1. Windstorm Offices. Updated telephone numbers of the Texas Department of Insurance's windstorm field offices is added to this appendix.

2. Glossary. New definitions of construction terms used in the code are added or revised in this appendix.

3. TDI Standard TDI 1-98. Definitions for porous and nonporous impact protective systems are added. The acceptance criteria for impact protective systems and exterior opening systems are clarified.

4. Reference Material Sources. References are added to include additional national standards used in the development of the code.

5. Shearwall Examples. Existing shearwall examples are clarified to incorporate the amendments to the code.

6. Fastening Schedule. Additional options are provided for fasteners.

7. Figures. Illustrations are added to correspond to changes and clarifications for the code.

Copies of the Building Code for Windstorm Resistant Construction, as amended, are available from the Office of the Chief Clerk, MC 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104.

The effective date stated in the proposed amendments is December 31, 1998; however, that date may change depending on the date on which any amendments are adopted.

The department will consider the adoption of amendments to §5.4008 in a public hearing under Docket Number 2385, scheduled for 9:00 o'clock, a.m. on November 24, 1998, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas.

Alexis Dick, deputy commissioner for the inspections group, has determined that for each year of the first five years that the proposed amendments will be in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the section. Ms. Dick has also determined that there will be no adverse effect on local employment or the local economy.

Ms. Dick has also determined that for each year of the first five years the amended section is in effect, the public benefit anticipated as a result of adopting this amended section will be the facilitation of compliance by coastal builders with the new coastal building code by increasing the building options available to the building industry and consumers. The amendments add a number of alternative construction methods and substitute materials that will provide the same level of windstorm performance as those they supplement. The amendments, therefore, provide additional flexibility to builders and allow them to select the most cost-effective way to achieve the standards set forth in the code. The new code, along with the additional proposed prescriptive requirements, provides more stringent wind load and impact resistant requirements for structures in those areas along the coastline that are most susceptible to hurricanes and windstorms; thus, a second public benefit is the reduction in

loss of life and injury to the public and a reduction in claims for damage to structures in the event of a hurricane or other high wind event. A Texas A&M cost-benefit study, commissioned by the department in conjunction with the adoption of the new building code, determined that the new standards of the code would reduce hurricane losses by about 50 percent. The department has reviewed the Texas A&M study in light of the proposed amendments and has concluded that the determinations of the Texas A&M study regarding reduction in hurricane losses are still valid. A further public benefit is that consumers will have a better opportunity to find insurance coverage through the voluntary market for residences built to the new code and its additional proposed prescriptive requirements.

Ms. Dick estimates that the probable economic cost for each year of the first five years the amended section will be in effect will include increased costs of construction in those areas where the amended building code will be applicable. The Texas A&M study indicated an additional cost ranging from 2% to 5% of the cost to build a house under the then-existing code, depending on the size and location of the structure. That study was based on a comparison of the cost of labor and materials under the then-existing code and the then-proposed new code in the construction of eight residential risks in Galveston (four inland and four seaward) and eight residential risks in Corpus Christi (four inland and four seaward). Actual increases in cost to consumers varied from \$1,719 for a 1,000 square foot home to \$8,578 for a 3,000 square foot home in Galveston County which includes a 30% increase for overhead and profit and \$1,991 for a 1,000 square foot home to \$8,773 for a 3,000 square foot home in Nueces County (Corpus Christi), including a 30% increase for overhead and profit. In addition, the study demonstrated that the reduction in losses justified the additional costs. The damageability ratio to the structure and contents indicated a reduction of approximately 50% for categories 1, 2, and 3 hurricanes. Using damageability, the variance of interest rates and the life expectancy of the structure in analyzing the then-proposed code, a break-even cost was determined. The actual cost effectiveness for compliance with the then-proposed new code was determined by analyzing the break-even cost and the additional cost of construction. In every case, according to the study, the estimated cost to implement the new code was less than the determined break-even cost, indicating that over a period of time the then-proposed new code would be cost effective. The department has reviewed the Texas A&M study regarding cost of compliance in conjunction with the proposed amendments and has concluded that the Texas A&M cost estimate accurately assesses the costs for compliance with the additional prescriptive requirements contained in these proposed amendments. Moreover, a cost savings may be seen in the following area. A builder's compliance with the code may obviate the expense of hiring professional engineers to design and/or inspect a structure. Consumers have the option to have the inspections conducted by the department's inspectors under the current fee not to exceed \$100; whereas, hiring a professional engineer to inspect and/or design a structure may vary depending on the marketplace and size and location of the structure. Small businesses, which build structures insured through the Association, would incur the same estimated 2% to 5% construction cost increase as larger businesses. The amendments, therefore, will not create a differential impact on smaller firms. It is also anticipated that any increases in the costs of construction would be passed on to consumers by the building industry. The amendments, to the extent they

may alleviate the cost of hiring a professional engineer in some instances, may actually reduce the cost of compliance for both large and small businesses. Commercial buildings of sizes greater than 5,000 square feet are required to be designed to meet the most current building codes adopted by cities and towns which include codes that meet or exceed the current requirements of the new building code. In general, therefore, the new code and its proposed amendments will not create additional costs for the construction of buildings exceeding 5,000 square feet; however, construction costs of these structures may increase, depending on the location, size, height of the building, and the number of exterior wall openings. In any event, the Texas A&M study has demonstrated that the reduction in losses justifies the additional costs. While setting forth this analysis, it is important to note that the department has determined that it is not legal or feasible to exempt small businesses or waive compliance considering the purpose of the statute under which the amendments are to be adopted, that being the Association's providing windstorm and hail insurance coverage to residents in designated catastrophe areas who are unable to obtain such coverage in the voluntary market.

Comments on the proposed amendments to be considered by the department must be submitted within 30 days after publication of the proposed section in the Texas Register to Lynda H. Nesenholtz, General Counsel and Chief Clerk, MC 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment should be submitted to Alexis Dick, Deputy Commissioner, Inspections Group, MC 103-1A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Article 21.49, §5A of the Insurance Code requires a hearing to be held before any orders may be issued pursuant to Article 21.49 and provides that any person may appear and testify for or against the adoption of the proposed order.

The amendment is adopted pursuant to the Insurance Code Articles 21.49 and 1.03A. Article 21.49, §6A specifies building code requirements and approval or inspection procedures for windstorm and hail insurance through the Association. Article 21.49, §6A(f), Insurance Code, requires the Commissioner to appoint a Building Code Advisory Committee to advise and make recommendations to the Commissioner on building specifications in the Association's plan of operation for structures to be eligible for windstorm and hail insurance through the Association. Article 21.49, §5(c) of the Insurance Code provides that the Commissioner of Insurance by rule shall adopt the Association's plan of operation with the advice of the Association's board of directors. Article 21.49, §6A(f) and §5(c), by their terms, delegate the foregoing authority to the State Board of Insurance. However, under Article 1.02 of the Insurance Code, a reference in the Insurance Code or another insurance law to the State Board of Insurance means the Commissioner of Insurance or the Texas Department of Insurance, as consistent with the respective powers and duties of the Commissioner and the Department under Article 1.02. Article 1.03A authorizes the Commissioner of Insurance to adopt rules and regulations, which must be for general and uniform application, for the conduct and execution of the duties and function of the Texas Department of Insurance only as authorized by statute.

The following statute is affected by this proposal: Insurance Code, Article 21.49

§5.4008. *Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998.*

(a) Areas Seaward of the Intracoastal Canal. To be eligible for catastrophe property insurance, structures located in designated catastrophe areas which are seaward of the Intracoastal Canal and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction. The Texas Department of Insurance adopts by reference the Building Code for Windstorm Resistant Construction, effective September 1, 1998. Amendments to the Building Code for Windstorm Resistant Construction are adopted by reference to be effective December 31, 1998.

(b) Areas Inland of the Intracoastal Canal and Within Approximately 25 Miles of the Texas Coastline and east of the Specified Boundary Line and Certain Areas in Harris County.

(1) To be eligible for catastrophe property insurance, structures located in designated catastrophe areas specified in paragraph (2)(A) and (B) of this subsection and constructed, repaired, or to which additions are made on and after September 1, 1998, shall comply with the Building Code for Windstorm Resistant Construction which is adopted by reference in subsection (a) of this section and any applicable amendments adopted by reference to be effective December 31, 1998.

(2) (No change.)

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

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

Filed with the Office of the Secretary of State on October 5, 1998.

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Lynda H. Nesenholtz

General Counsel and Chief Clerk

Texas Department of Insurance

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-6327

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource Conservation Commission

Chapter 37. Financial Assurance

Subchapter O. Financial Assurance for Public Drinking Water Systems and Utilities

30 TAC §§37.5001, 37.5002, 37.5011

The Texas Natural Resource Conservation Commission proposes new §§37.5001, 37.5002, and 37.5011, relating to financial assurance for public drinking water systems and sewer utilities.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to specify acceptable forms of financial assurance required of public drinking water systems, water and wastewater utilities. The rule is

proposed in part to comply with the requirements of the Safe Drinking Water Act Amendments of 1996, which require states to ensure that new community water systems and new non-transient, noncommunity water systems demonstrate financial capacity. Senate Bill 1, Article 6, 75th Leg. (1997) granted the commission the authority to require financial assurance in certain defined circumstances. Financial assurance may be required for systems that were constructed without approval, have a history of non-compliance, for applicants requesting approval for a certificate of convenience and necessity or a certificate amendment, for a person establishing, purchasing, or acquiring a retail public utility, for a person acquiring a controlling interest through a purchase of stock in a utility, or for a utility that is subject to commission enforcement action to ensure continuous and adequate utility service.

Currently with this amendment, the commission is proposing amendments to Chapters 290 and 291 that specify under what conditions financial assurance will be required. Please refer to the preambles for these chapters amendments for additional information. The proposed amendments in this chapter only specify acceptable forms of financial assurance when required by other provisions of these rules.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for each year of the first five years the rules as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the rules. The effect on state government will be an increase in cost as a result of requiring financial assurance from public water systems and sewer utilities. The effect on state government will be a slight increase in the agency workload due to review of the adequacy of required financial assurance. During the first five years the rule is in effect it is anticipated that the rule will require no more than an addition of five FTEs to the agency at an annual cost of \$325,000. These five FTEs will also be reviewing business plans under 30 TAC Chapter 290. During the first five years the rule is in effect, it is not expected that as a result of enforcing or administering the rule, that local governments will have additional costs or cost reductions. While some local governments may have to provide financial assurance, it is not possible to estimate the costs for the average local government to acquire financial assurance because most local governments will not have to provide any financial assurance; for those local governments that will have to provide financial assurance, the costs will vary depending on the size of the principal amount required in an individual case; and the costs of complying the financial assurance provisions are not greater than the costs to local governments of complying the existing regulations. There is no expected loss or increase in revenues to the state or local governments as a result of enforcing or administering the rule.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated as a result of enforcement of, and compliance with, the proposed rules will be an increase in public water systems and sewer utilities that are in compliance with state and federal regulations related to drinking water and wastewater quality. The proposed rule does affect small businesses that are investor owned utilities (IOUs) that supply public drinking water or sewer services as their business. It is not possible to compare the costs for the smallest IOU to the largest IOU

to acquire financial assurance that complies with the rules because the cost will vary depending on the size of the principal amount required in an individual case. However, the cost of providing financial assurance that complies with this section is estimated at between one half and ten percent of the principal amount of the difference between the amount of projected cash needs of the period of time prescribed by the executive director. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" because the specific intent of the rule is to regulate the form of financial assurance required of certain water and sewer service utilities, not to protect the environment or reduce the risks to human health from environmental exposure. The rule will not materially affect the economy, a sector of the economy, productivity, competition, jobs, or the environment. The effect is not material because it is estimated that the cost to a utility to comply with the financial assurance requirement will range from one half of a percent to ten percent of the principal amount of the financial assurance. Furthermore this rule is proposed under the following specific state laws: Texas Water Code §§13.246, 13.253, 13.301, 13.302, and the Health and Safety Code §341.035, §341.0355. Those statutes do not expressly limit the form and amount of financial assurance that the commission may require of public drinking water systems and utilities, and therefore this rule does not exceed the limitation of those statutes. The financial assurance provision is proposed in part to comply with the requirements of the Safe Drinking Water Act Amendments of 1996, but there are no specific limitations on the amount or form of financial assurance in those statutes, therefore this rule does not exceed the requirements of that statute.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to specify acceptable forms of financial assurance required of public drinking water systems and utilities. The rules will substantially advance this specific purpose by specifying acceptable forms of financial assurance that may be required by the commission. Promulgation and enforcement of these rules will not burden private real property because these rules only prescribe the form of financial assurance that may be otherwise imposed on a water or sewer service provider by the commission.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING A public hearing on these proposals will be held on November 2, 1998, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The new sections are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and to implement Texas Water Code §§13.246, 13.253, 13.301, 13.302, and the Health and Safety Code §341.035, §341.0355.

There are no other rules, statutes or codes that will be affected by this proposal.

§37.5001. Applicability.

This subchapter applies to public water systems and retail public utilities required to provide evidence of financial assurance under Chapter 290 of this title (relating to Public Drinking Water), or Chapter 291 of this title (relating to Utility Regulation).

§37.5002. Definitions.

For definitions of words and terms and other definitions not found in Subchapter A of this Chapter, relating to General Financial Assurance Requirements, see §290.38, of this title (relating to Rules and Regulations for Public Water Systems), and §291.3, of this title (relating to Definitions of Terms).

§37.5011. Financial Assurance for a Public Water System or Retail Public Utility.

(a) The prospective owner or operator of a public water system may be ordered to provide adequate financial assurance to operate the system as specified in §291.93(f) of this title (relating to General Provisions.) A public water system that was constructed without approval or has a history of noncompliance or is subject to commission enforcement action as specified in §290.39(k) of this title (relating to General Provisions), may be required to provide financial assurance to operate the system in accordance with applicable laws and rules. Financial assurance may be required of an applicant requesting approval for a certificate or a certificate amendment or a person establishing, purchasing or acquiring a retail public utility as specified in §291.102(f) of this title (relating to Criteria for Considering and Granting Certificates or Amendments), and §291.109(c) of this title (relating to Report of Sale, Merger, Etc: Investigation; Disallowance of Transaction). A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial assurance as specified in §291.111(c) of this title (relating to Purchase of Voting Stock in Another Utility). The

commission may order a utility that has failed to provide continuous and adequate service to provide financial assurance to ensure that the system will be operated as required by §291.114 of this title, (relating to Requirements to Provide Continuous and Adequate Service). Such financial assurance will allow for payment of improvements and repairs to the water or sewer system.

(b) A temporary manager will post financial assurance as specified in §291.143(c) of this title, (relating to Operation of a Utility by a Temporary Manager). Financial assurance demonstrations shall comply with the wordings of the mechanisms as described in Subchapter D of this chapter, (relating to Wording of the Mechanisms for Closure), except operation should be substituted for closure and the appropriate statutory reference to Public Drinking Water or Utility Regulation should be cited in the document.

(c) If rate increases or customer surcharges are determined by the executive director to be an acceptable form for demonstrating financial assurance in accordance with §290.39(o) of this title, (relating to General Provisions), such funds shall be deposited into an escrow account with an escrow agent that has the authority to act as an escrow agent and whose escrow operations are regulated and examined by a Federal or State agency. At least annually a statement of the account shall be submitted to the executive director.

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

Filed with the Office of the Secretary of State, on October 5, 1998.

TRD-9815528

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 239-4640



Chapter 80. Contested Case Hearings

Subchapter A. General Rules

30 TAC §80.3

The Texas Natural Resource Conservation Commission proposes an amendment to §80.3, relating to Judges.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendment is to delegate to Administrative Law Judges the authority to issue interim rate orders under Texas Water Code Chapter 13 as provided by Texas Water Code §5.311, as amended by Senate Bill 1 (1997). This authorization to issue interlocutory orders will save time and unnecessary expense by providing a simplified procedure for setting interim rates prior to final commission action on the rate case.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the section as proposed is in effect, there will be no significant fiscal implications for state or local government as a result of enforcing and administering the section. The effect on state government will be some net reduction in cost due to delegation to an Administrative Law Judge the consideration of interim water and sewer

rates for utility rate cases considered by the commission. However, the cost reductions to state government are not expected to be significant. There will be no effect on local government as a result of this rule.

PUBLIC BENEFIT

Mr. Minick also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcement of and compliance with the section is an expedited consideration of interim rates in utility rates cases before the commission pursuant to the Water Code Chapter 13. Generally, the expedited procedure under this rule will result in a more cost effective process for those persons seeking approval of interim utility rates. The proposed rule will affect investor owned utilities, many of which are small businesses. The effects on these small businesses will be the same potential reductions in cost from an expedited approval process that any affected utility subject to these rules may realize. The costs to a small business seeking an interim utility rate under the new section is not anticipated to be significantly different from the current costs, therefore no adverse effects to any small business are anticipated. Costs to individuals to protest an interim rate are not expected to vary significantly from similar costs under the current rules. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" because the specific intent of the amendment is to make the rule consistent with statutory authority, by allowing an Administrative Law Judge to issue interim rate orders under Texas Water Code, Chapter 13, not to protect the environment or reduce risks to human health from environmental exposure.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to delegate the authority to the State Office of Administrative Hearings (SOAH) to set interim rates under Texas Water Code Chapter 13. The rules will substantially advance this specific purpose by expressly granting SOAH judges the authority to issue interim rate orders under Texas Water Code Chapter 13. Promulgation and enforcement of these rules will not burden private real property which is the subject of the rules because the rule is a procedural rule that provides a more streamlined administrative process for setting interim rates.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

PUBLIC HEARING

A public hearing on these proposals will be held on November 2, 1998, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

STATUTORY AUTHORITY

The amendment is proposed under Texas Water Code §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and to implement Texas Water Code §5.311, which allows the commission to delegate to SOAH the authority to issue interlocutory orders related to interim rates under Texas Water Code, Chapter 13. There are no other statutes implemented by this rule.

There are no other codes, statutes or rules that will be affected by this proposal.

§80.3. Judges.

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

(c) Judges shall have authority to:

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

(14) impose appropriate sanctions; ~~and~~

(15) issue interim rate orders under Texas Water Code Chapter 13; and

(16) [~~15~~] exercise any other appropriate powers necessary or convenient to carry out his responsibilities.

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 October 5, 1998.

TRD-9815527

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 239-4640

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Chapter 290. [Water Hygiene] Public Drinking Water

The Texas Natural Resource Conservation Commission proposes amendments to §§290.38-290.40, 290.42-290.47, 290.102, and 290.116, concerning public drinking water.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to implement sections of Senate Bill 1, Article 6 Regular Session, 75th Leg. 1997, related to ensuring the technical, managerial and financial capacity of public water systems; clarify the delineation of responsibility with the State Board of Plumbing Examiners regarding plumbers, customer service inspections, and backflow prevention devices; update definitions to maintain consistency with the federal Safe Drinking Water Act Amendments of 1996; and make organizational and wording changes to improve the readability of the rules.

In §290.38, relating to Public Drinking Water Supply Systems, several definitions of technical terms have been moved from Subchapter F, §290.102, relating to Definitions. The intent is to place all technical words common to both subchapters in §290.38. Technical terms only used in Subchapter F are now defined in §290.102. Definitions of "connection" and "public water system" have been amended in response to the Safe Drinking Water Act Amendments of 1996. The intent is to expand the definition of those terms as broadly as the federal definitions, but not to regulate any public water system or activity not encompassed in the federal definitions. The term "licensed professional engineer" is defined to be consistent with the terminology contained in recent amendments to Article 3271a, Texas Civil Statutes. Accordingly, in the rules, use of the words "registered engineer" have been changed to "licensed professional engineer."

Proposed amendments to §290.39, relating to General Provisions, implement new Texas Water Code §13.241 and changes to Texas Water Code §13.253 as enacted by of S.B. 1, Article 6, 75th Legislature, 1997, related to approval of plans and specifications, business plans, and financial assurance required of some public water systems. The section specifies when approvals, business plans, and financial assurance are required and generally describes the contents of the business plan.

Proposed amendments to §290.46, relating to Minimum Acceptable Operating Practices for Public Drinking Water Systems, are to clarify the relationship between the commission's rules regarding customer service inspections, the prevention of cross connections and illegal lead materials in public water systems and the State Board of Plumbing Examiners' rules regulating plumbers. A customer service inspection under these proposed rules is not a plumbing inspection as defined by the State Board of Plumbing Examiners. Similarly §290.47(d), Appendix D, relating to Sample Service Inspection Certification, is proposed to be amended to remove any acts from the customer service inspection that might be construed as a plumbing inspection.

Section 290.102, relating to Definitions, deletes technical terms now defined in §290.38. Definitions contained in Title 40 Code of Federal Regulations §141.2 and a standard industry source are incorporated into this section by reference to maintain consistency between the state and federal safe drinking water programs. Definitions in §290.102 have been expanded to include terms from §290.116, relating to Control of Trihalomethanes in

Drinking Water, and subsections of that provision have been renumbered.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the rules as proposed are in effect, there will be fiscal implications as a result of administration and enforcement of the rules. The effect on state government will be an increase in administrative costs associated with the requirements of the rules, including the requirement for review and approval of business plans and demonstration of financial assurance. These costs are estimated to be \$181,693 in the first year and \$173,483 in each succeeding year of the five-year period. There are no significant fiscal implications anticipated for units of local government, because under the Health and Safety Code §341.035(d) local governments are exempt from the requirements to submit business plans.

PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years the rules as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with the rules will be an increase in water and sewer utilities that have the financial capability to comply with state and federal regulations related to drinking water and wastewater quality, more cost-effective and dependable delivery of water and sewer services to ratepayers, and enhanced protection of public health, safety and convenience related to the provision of adequate water utility services. The anticipated fiscal implications for affected persons are the increased costs associated with the development and filing of a business plan and the provision of financial assurance. The cost of preparation of a business plan for the average affected water utility is estimated to be \$1,500, although for larger systems, or systems with unique operating conditions, this figure could be significantly higher in some cases. It is not possible to estimate the costs of acquiring financial assurance that complies with the rules because the cost will vary with the size of the public water system for which financial assurance is sought and a variety of site specific circumstances. However, the cost of financial assurance is anticipated to be a small percentage of the either the total cost to construct a system or its annual operating costs, with the possible exception of the smallest operations. The cost of acquiring financial assurance is anticipated to be between one half and ten percent of the principal amount of the financial assurance depending on the individual system and the associated risks. The proposed rule does affect small businesses, particularly investor-owned utilities that supply public drinking water or sewer service as their business. These small businesses will realize the same fiscal effects of the proposed rule as any water or wastewater system operator. Due to the smaller size of the operations, however, the costs of compliance with these rules may be marginally higher as a function of labor costs, costs per employee or costs per unit of revenue. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" because the specific intent of the proposed amendments is to ensure the technical,

managerial and financial capacity of public water systems; clarify the delineation of responsibility between the commission and the State Board of Plumbing Examiners regarding plumbers and customer service inspections; update definitions to maintain consistency with the federal Safe Drinking Water Act; and make organizational and wording changes to improve readability of the rules. The rule does not exceed any requirement of state or federal law. No delegation agreements or contracts between the commission and an agency or representative of the federal government are relevant to these rules. These proposed rules would implement S.B.1, Article 6, 75th Leg. 1997.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement sections of S.B.1, Article 6 related to ensuring the technical, managerial and financial capacity of public water systems; clarify the delineation of responsibility between the commission and the State Board of Plumbing Examiners regarding plumbers and customer service inspections; update definitions to maintain consistency with the federal Safe Drinking Water Act; and make organizational and wording changes to update definitions and improve readability of the rules. The rules will substantially advance this specific purpose by requiring public water suppliers, including some mobile home parks and investor owned utilities, to prepare a business plan or provide financial assurance of its ability to provide service. These mobile home parks and investor owned utilities may own private real property. The preparation of a business plan will not burden private real property, because this is a procedural requirement designed to demonstrate the financial capability of the public water system. Preparation of the business plan and requirements for financial assurance are part of the agency's efforts to comply with the Safe Drinking Water Act Amendments of 1996, specifically Section 1420 which would reduce federal funds to the state revolving loan fund unless the agency has the "legal authority or other means to ensure that all new ... water systems ... demonstrate technical, managerial, and financial capacity ..." Other than the public water systems required to prepare business plans, private real property is not subject to these regulations.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

RULES REVIEW

The commission, concurrently with these proposed amendments to Chapter 290, proposes the review of Chapter 290, Subchapters D through G, concerning Public Drinking Water. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. See the Rules Review section of this issue of the *Texas Register* for additional information on the rules review of this Chapter.

PUBLIC HEARING

A public hearing on these proposals will be held on November 2, 1998, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

Subchapter D. Rules and Regulations for Public Water Systems

30 TAC §§290.38–290.40, 290.42–290.47

STATUTORY AUTHORITY

The amended sections are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Health and Safety Code §341.031 which gives the commission the power to establish standards for public drinking water and to adopt rules to implement the federal Safe Drinking Water Act. Section 290.39 implements Health and Safety Code §§341.035, 341.0355, and 341.0356.

There are no other codes, statutes, and rules that will be affected this proposal.

§290.38. *Public Drinking Water Supply Systems [Definitions] Definitions.*

The following words and terms, when used in this chapter shall have the following meanings, unless the context clearly indicates otherwise. If a word or term used in this title is not contained in the following list, its definition shall be as shown in Title 40 Code of Federal Regulations. 141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

(1) ABPA - The American Backflow Prevention Association, P.O. Box 1563, Akron, Ohio 44309-1563.

(2) ANSI standards - The standards of the American National Standards Institute, Inc., 1430 Broadway, New York, New York 10018.

(3) Approved laboratory - A laboratory certified and approved by the Texas Department of Health to analyze water samples to determine their compliance with maximum allowable constituent levels.

(4) ASME standards - The standards of the American Society of Mechanical Engineers, 346 East 47th Street, New York, New York 10017.

(5) ASSE - The American Society of Sanitary Engineering, P.O. Box 40362, Bay Village, Ohio 44140.

(6) ASTM standards - The standards of the American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19102.

(7) Auxiliary power - Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as auxiliary power in areas which are not subject to large scale power outages due to natural disasters.

(8) AWWA standards - The latest edition of the applicable standards as approved and published by the American Water Works Association, 6666 W. Quincy Avenue, Denver, Colorado 80235.

~~[Commission - The Texas Natural Resource Conservation Commission.]~~

(9) Community water system - A public water system which has a potential to serve at least 15 residential service connections on a year-round basis or serves at least 25 residents on a year-round basis.

(10) Connection - A single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system. As an example, the number of service connections in an apartment complex would be equal to the number of individual apartment units. When enough data is not available to accurately determine the number of connections to be served or being served, the population served divided by three will be used as the number of connections for calculating system capacity requirements. Conversely, if only the number of connections is known, the connection total multiplied by three will be the number used for population served. For the purposes of this definition, a dwelling or business which is connected to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if (a) the water is used exclusively for purposes other than those defined as human consumption (see human consumption definition); (b) the commission determines that alternative water to achieve the equivalent level of public health protection provided by the drinking water standards is provided for residential or similar human consumption, including, but not limited to, drinking and cooking; or (c) the commission determines that the water provided for residential or similar human consumption is centrally treated or is treated at the point of entry by a provider, a pass through entity, or the user to achieve the equivalent level of protection provided by the drinking water standards.

(11) Contamination - The presence of any foreign substance (organic, inorganic, radiological or biological) in water which tends to degrade its quality so as to constitute a hazard or impair the usefulness of the water.

(12) Cross-connection - A physical connection between a public water system and either another supply of unknown or questionable quality, any source which may contain contaminating or polluting substances, or any source of water treated to a lesser degree in the treatment process.

(13) Disinfectant - Any oxidant, including but not limited to chlorine, chlorine dioxide, chloramines, and ozone added to the

water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.

(14) Disinfection - A process which inactivates pathogenic organisms in the water by chemical oxidants or equivalent agents.

(15) Drinking water - All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.

(16) Drinking water standards - The commission rules covering drinking water standards in §§290.101 - 290.121 of this title (relating to Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems).

(17) Elevated storage capacity - That portion of water which can be stored at least 80 feet above the highest service connection in the pressure plane served by the storage tank.

(18) Emergency power - Either mechanical power or electric generators which can enable the system to provide water under pressure to the distribution system in the event of a local power failure. With the approval of the executive director, dual primary electric service may be considered as emergency power in areas which are not subject to large scale power outages due to natural disasters.

~~[Executive director - The executive director of the Texas Water Commission.]~~

(19) Ground water under the influence of surface water - Any water beneath the surface of the ground with:

(A) significant occurrence of insects or other macroorganisms, algae, or large-diameter pathogens such as Giardia Lambia or Cryptosporidium, or

(B) significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions.

(20) Health hazard - Any conditions, devices or practices in the water supply system and/or its operation which create, or may create, a danger to the public health and well-being of the water consumer. An example of a health hazard is a structural defect in the water supply system, whether of location, design, or construction, which may regularly or occasionally prevent satisfactory purification of the water supply or cause it to be contaminated from extraneous sources.

(21) High health hazard - A cross-connection, potential cross-connection, or other situation involving any substance that could cause death, illness, spread of disease, or has a high probability of causing such effects if introduced into the potable drinking water supply.

(22) Human consumption - Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes, and preparing foods.

(23) Interconnection - A physical connection between two public water supply systems.

(24) Intruder-resistant fence - A fence six feet or more in height, constructed of wood, concrete, masonry, or metal with three strands of barbed wire extending outward from the top of the fence at a 45 degree angle and have the smooth side of the fence on the outside wall. In lieu of the barbed wire, the fence must be eight feet in height. The fence must be in good repair and close enough to surface grade to prevent intruder passage.

(25) Licensed Professional Engineer - An engineer who maintains a current license through the Texas Board of Professional Engineers in accordance with its requirements for professional practice.

(26) Maximum daily demand - In the absence of verified historical data, maximum daily demand means 2.4 times the average daily demand of the system.

(27) MCL - Maximum Contaminant Level .

(28) mg/l - Milligrams per liter, a measure of concentration, equivalent to and replacing parts per million (ppm) in the case of dilute solutions.

(29) Monthly Reports of Water Works Operations - The daily record of data relating to the operation of the system facilities compiled in a monthly report.

(30) NFPA standards - The standards of the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts, 02269-9101.

(31) NSF - The National Sanitation Foundation and refers to the listings developed by the Foundation, P.O. Box 1468, Ann Arbor, Michigan 48106.

(32) Noncommunity water system - Any public water system which is not a community system.

(33) Nontransient noncommunity water system - A public water system that is not a community water system and regularly serves at least 25 of the same persons at least six months out of the year.

(34) psi - Pounds per square inch.

(35) Peak hourly demand - In the absence of verified historical data, peak hourly demand means 1.25 times the maximum daily demand (prorated to an hourly rate) if a public water supply meets the commission's minimum requirements for elevated storage capacity and 1.85 times the maximum daily demand (prorated to an hourly rate) if the system uses pressure tanks or fails to meet the commission's minimum elevated storage capacity requirement.

(36) Plumbing inspector - Any person employed by a political subdivision for the purpose of inspecting plumbing work and installations in connection with health and safety laws and ordinances, who has no financial or advisory interest in any plumbing company, and who has successfully fulfilled the examinations and requirements of the Texas State Board of Plumbing Examiners.

(37) Plumbing ordinance - A set of rules governing plumbing practices which are at least as stringent and comprehensive as one of the following nationally recognized codes:

- (A) Southern Standard Plumbing Code.
- (B) Uniform Plumbing Code.
- (C) National Standard Plumbing Code.

(38) Public health engineering practices - Requirements in these sections or guidelines promulgated by the commission.

(39) Public water system - A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, [piped water for human consumption,] which includes all uses described under the definition for drinking water. Such a system must have [~~a potential for~~] at least 15 service connections or serve at least 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm, or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he lives in, uses as his place of employment, or works in a place to which drinking water is supplied from the system.

~~[Registered Professional Engineer [- An engineer who maintains a current license through the Texas State Board of Registration for Professional Engineers in accordance with its requirements for professional practice-]]~~

(40) Sanitary control easement - A legally binding document securing all land, within 150 feet of a public water supply well location, from pollution hazards. This document must fully describe the location of the well and surrounding lands and must be filed in the County records to be legally binding.

(41) Sanitary survey - An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system, for the purpose of evaluating the adequacy for producing and distributing safe drinking water.

(42) Service pump - Any pump that takes treated water from storage and discharges to the distribution system.

(43) Transfer pump - Any pump which conveys water from one point to another within the treatment process or which conveys water to storage facilities prior to distribution.

(44) Transient noncommunity water system - A public water system that is not a community water system and serves at least 25 persons at least 60 days out of the year, yet by its characteristics, does not meet the definition of a nontransient noncommunity water system.

(45) Uniform Fire Code - The standards of the International Conference of Building Officials, 5360 Workman Mill Rd., Wittier, California, 90601-2298.

(46) Water Supply Protection Specialist - Any person who holds a license endorsement issued by the Texas State Board of Plumbing Examiners to engage in the inspection, in connection with health and safety laws and ordinances, of the plumbing work or installation of a public water system distribution facility or of customer owned plumbing connected to that system's water distribution lines.

§290.39. *General Provisions.*

(a) Authority for requirements. The Texas Health and Safety Code, Chapter 341, Subchapter C prescribes the duties of the commission [~~Texas Natural Resource Conservation Commission~~]

relating to the regulation and control of public drinking water systems in the State. These statutes require that the commission ensure that public water systems: supply safe drinking water in adequate quantities, are financially stable and technically sound, promote use of regional and area-wide drinking water systems, and review completed plans and specifications and business plans for all contemplated public water systems. [-] The statutes also require ~~and that~~ the commission be notified of any subsequent material changes, improvements, additions, or alterations in existing systems and, consider compliance history in approving new or modified public water systems. In order to properly discharge these duties, the commission ~~[Texas Natural Resource Conservation Commission]~~ is authorized to develop rules requiring the thorough investigation of service from existing systems, governing the design of system facilities, as well as minimum acceptable financial, managerial, technical and operating practices necessary to protect the public health.

(b) Reason for these sections and minimum criteria. These sections have been adopted to insure regionalization and area-wide options are fully considered, the inclusion of all data essential for comprehensive consideration of the contemplated project, or improvements, additions, alterations or changes thereto and to establish minimum standardized public health design criteria in compliance with existing state statutes and in accordance with good public health engineering practices. In addition, minimum acceptable financial, managerial, technical and operating practices must be specified to insure that facilities are properly operated to produce and distribute a safe, potable water.

(c) Required actions and approvals prior to construction. A person may not begin construction of a public drinking water supply system unless the executive director determines the following requirements have been satisfied and approves construction of the proposed system.

(1) A person proposing to install a public drinking water system within the extraterritorial jurisdiction of a municipality, or within one-half mile of the corporate boundaries of a district, other political subdivision providing the same service, or a certificated service area boundary of any other water service provider shall provide to the executive director evidence that:

(A) Written application for service was made to that provider; and

(B) All application requirements of the service provider were satisfied, including the payment of related fees.

(2) If a person is not required to complete the steps in §290.39(c)(1) or if a person completes the steps in §290.39(c)(1), and is denied service or determines the existing provider's cost estimate is not feasible for the development to be served, the person shall submit to the executive director :

(A) plans and specifications for the system; and

(B) a business plan for the system.

(d) Submission ~~[Authorization for examination]~~ of plans.

(1) Plans, specifications, and related documents will not be considered unless they have been prepared under the direction of a licensed ~~[registered]~~ professional engineer. All engineering documents must have engineering seals, signatures and dates affixed in accordance with the rules of the Texas State Board of Registration for Professional Engineers.

(2) Detailed plans must be submitted for examination at least 30 days prior to the time that approval, comments or

recommendations are desired. From this, it is not to be inferred that final action will be forthcoming within the time mentioned.

(3) The limits of approval are as follows:

(A) The commission's Water Utilities Division furnishes consultation services as a reviewing body only, and its licensed professional ~~[registered]~~ engineers may neither act as design engineers nor furnish detailed estimates.

(B) The commission's Water Utilities Division does not examine plans and specifications in regard to the structural features of design, such as strength of concrete or adequacy of reinforcing. Only the features covered by these sections will be reviewed.

(C) The consulting engineer and/or owner must provide surveillance adequate to assure that facilities will be constructed according to approved plans and must notify the commission's Water Utilities Division in writing upon completion of all work.

(e) ~~[(d)]~~ Submission of planning material. In general, the planning material submitted shall conform to the following requirements.

(1) Engineering reports are required for new water systems and all surface water treatment plants. Engineering reports are also required when design or capacity deficiencies are identified in an existing system. The engineering report shall include, at least, coverage of the following items:

(A) statement of the problem or problems;

(B) present and future areas to be served, with population data;

(C) the source, with quantity and quality of water available;

(D) present and estimated future maximum and minimum water quantity demands;

(E) description of proposed site and surroundings for the water works facilities;

(F) type of treatment, equipment, and capacity of facilities;

(G) basic design data, including pumping capacities, water storage and flexibility of system operation under normal and emergency conditions; and,

(H) the adequacy of the facilities with regard to delivery capacity and pressure throughout the system.

(2) All plans and drawings submitted may be printed on any of the various papers which give distinct lines. All prints must be clear, legible and assembled to facilitate review.

(A) the relative location of all facilities which are pertinent to the specific project shall be shown.

(B) the location of all abandoned or inactive wells within 1/4 mile of a proposed wellsite shall be shown or reported.

(C) if staged construction is anticipated, the overall plan shall be presented, even though a portion of the construction may be deferred.

(D) a general map or plan of the municipality, water district, or area to be served shall accompany each proposal for a new water supply system.

(3) Specifications for construction of facilities shall accompany all plans. If a process or equipment which may be subject to probationary acceptance because of limited application or use in Texas is proposed, the commission, at its discretion, may give limited approval. In such case, the owner must be given a bonded guarantee from the manufacturer covering acceptable performance. The specifications shall include a statement that such a bonded guarantee will be provided the owner and shall also specify those conditions under which the bond will be forfeited. Such bond will be transferrable. The bond shall be retained by the owner and transferred when a change in ownership occurs.

(4) Copies of each fully executed sanitary control easement shall be provided to the commission prior to placing the well into service. Each original easement document must be recorded in the deed records at the county courthouse. See §290.47(c) of this title (relating to Appendices) for a suggested form.

(f) Submission of business plans. The prospective owner of the system or the person responsible for managing and operating the system must submit a business plan to the executive director that demonstrates that the owner or operator of the proposed system has available the financial, managerial, and technical capability to ensure future operation of the system in accordance with applicable laws and rules. The executive director may order the prospective owner or operator of the system to provide adequate financial assurance of ability to operate the system in accordance with applicable laws and rules, in the form of a bond or as specified by commission rule, unless the executive director finds that the business plan demonstrates adequate financial capability. A business plan shall include the information and be presented in a format prescribed by the executive director. For community water systems, the business plan shall contain, at a minimum, the following elements:

(1) Description of areas and population to be served by the potential system;

(2) Description of drinking water supply systems within a two mile radius of the proposed system, copies of written requests seeking to obtain service from each of those drinking watersupply systems, and copies of the responses to the written requests;

(3) Time line for construction of the system and commencement of operations;

(4) Identification of and costs of alternative sources of supply;

(5) Selection of the alternative to be used and the basis for that selection;

(6) Identification of the person or entity which owns or will own the drinking water system and any identifiable future owners of the drinking water system;

(7) Identification of any other businesses and public drinking water system(s) owned or operated by the applicant, owner(s), parent organization, and affiliated organization(s);

(8) An operations and maintenance plan which includes sufficient detail to support the budget estimate for operation and maintenance of the facilities;

(9) Assurances that the commitments and resources needed for proper operation and maintenance of the system are, and will continue to be, available, including the qualifications of the organization and each individual associated with the proposed system;

(10) For retail public utilities as defined by Texas Water Code §13.002:

(A) projected rate revenue for residential, commercial, and industrial customers;

(B) pro forma income, expense, and cash flow statements;

(11) Identification of any appropriate financial assurance, including those being offered to capital providers; and

(12) A notarized statement signed by the owner or responsible person that the business plan has been prepared under his direction and that he is responsible for the accuracy of the information.

(13) Other information required by the executive director to determine the adequacy of the business plan or financial assurance.

(g) A person is not required to file a business plan if the person:

(1) Is a county;

(2) Is a retail public utility as defined by Texas Water Code, §13.002, unless that person is a utility as defined by that section;

(3) Has executed an agreement with a political subdivision to transfer the ownership and operation of the water supply system to the political subdivision; or

(4) Is a noncommunity nontransient water system and the person has demonstrated financial assurance under Texas Health & Safety Code, Chapter 361 or 382 or Texas Water Code, Chapter 26.

(h) [(e)] Beginning and completion of work.

(1) No person may begin construction on a new public water system before receiving written approval of plans and specifications and, if required, approval of a business plan, from the executive director. No person may begin construction of modifications to a public water system without providing notification to the executive director and submitting and receiving approval of plans and specifications if requested in accordance with subsection (j) of this section.

(2) [(4)] The commission's Water Utilities Division, shall be notified in writing by the design engineer or the owner when construction is started.

(3) [(2)] Upon completion of the water works project, the engineer or owner will notify the commission's Water Utilities Division, in writing, as to its completion and attest to the fact that the completed work is substantially in accordance with the plans and change orders on file with the commission.

(i) [(f)] Changes in plans and specifications. Any addenda or change orders which may involve a health hazard or relocation of facilities, such as wells, treatment units and storage tanks, shall be submitted to the executive director for review and approval.

(j) [(g)] Changes in existing systems or supplies. Changes or additions to existing systems which result in an increase in production, treatment, or storage capacity shall require written notification to the executive director. Changes or additions in existing distribution systems shall require written notification to the executive director when the change or addition is greater than 10% of the existing distribution capacity or 250 connections, whichever is smaller. The executive director shall determine whether engineering plans and specifications will be required after initial notification of the extent of the modifications. The owner shall submit plans and specifications as

determined by the executive director in accordance with subsection (c) of this section. The commission will not require planning material on distribution line extensions from a political entity (county, municipality, district or water authority) when the entity has its own internal engineering review staff or is required, by local ordinance, to submit the material to another political entity for review and approval. The review staff must be separate and apart from the engineering staff or firm charged with the design of the distribution extension under review. The planning material must be reviewed and certified to be in compliance with §290.44 of this title (relating to Water Distribution) by a licensed ~~registered~~ professional engineer in the employ of the review entity. The effect of the distribution system improvements on compliance with §290.45 of this title (relating to Minimum Water System Capacity Requirements) must be evaluated. Should the proposed distribution system improvements result in an exceedance of the capacity requirements, written notice of the extent of the proposed improvements must be submitted to the executive director.

(k) ~~(h)~~ Planning material acceptance. Planning material for improvements to an existing system which does not meet the requirements of all sections of these regulations will not be considered unless the necessary modifications for correcting the deficiencies are included in the proposed improvements, or unless the executive director determines that reasonable progress is being made toward correcting the deficiencies and no immediate health hazard will be caused by the delay.

(l) ~~(i)~~ Exceptions. Requests for exceptions to one or more of these sections shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality.

(1) The exception must be requested in writing and must be substantiated by carefully documented data. The request for an exception should precede the submission of engineering plans and specifications for a proposed project.

(2) Any exception granted by the commission is subject to revocation.

(3) Any request for an exception which is not approved by the commission in writing is denied.

(m) ~~(j)~~ Notification of system startup or reactivation. The owner or responsible official must provide written notification to the commission of the startup of a new public water supply system or reactivation of an existing public water supply system. This notification must be made immediately upon meeting the definition of a public water system as defined in §290.38 of this title (relating to Definitions).

(n) The commission may require the owner or operator of a public drinking water supply system that was constructed without the approval required by Texas Health & Safety Code §341.035, that has a history of noncompliance with this subchapter or commission rules, or that is subject to a commission enforcement action to:

(1) Provide the executive director with a business plan that demonstrates that the system has available the financial, managerial, and technical resources adequate to ensure future operation of the system in accordance with applicable laws and rules. The business plan must fulfill all the requirements for a business plan as set forth in subsection (f) of this section; and

(2) Provide adequate financial assurance of the ability to operate the system in accordance with applicable laws and rules. The executive director will set the amount of the financial assurance, after the business plan has been reviewed and approved by the executive director. The amount of the financial assurance will equal the difference between the amount of projected system revenues and the projected cash needs for the period of time prescribed by the executive director. The form of the financial assurance will be as specified in §37.5011 of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and will be a bond or as specified by the executive director.

(o) If the executive director relies on rate increases or customer surcharges as the form of financial assurance, such funds shall be deposited in an escrow account as specified in §37.5011, of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities), and released only with the approval of the executive director.

§290.40. Cessation of Construction and Operations ~~[Prohibitions]~~

(a) A public water supply system shall stop operations on receipt of a written notification of the executive director or an order of the commission issued under this section.

(b) The executive director or the commission may order a public water supply system to stop operations if:

(1) The system was constructed without approved plans and specifications and a business plan as required under §290.39, (relating to General Provisions); or

(2) The executive director determines that the system presents an imminent health hazard.

(c) A notification or order issued under this section may be delivered by facsimile, by personal service, or by mail.

(d) A water supply system subject to notification or an order under this section, on written request, is entitled to an opportunity to be heard by the commissioners at a commission meeting.

(e) The public water supply system may not resume operations until the commission, the executive director, or a court authorizes the resumption.

~~(f)(a)~~ ~~[Construction and operation prohibition.]~~ No person or entity may construct or operate a public drinking water system in violation of these sections or the drinking water standards.

~~(g)(b)~~ ~~[Distribution prohibition.]~~ No person or entity may distribute drinking water to the public in violation of these sections or the drinking water standards.

§290.42. Water Treatment.

(a)-(e) (No change.)

(f) Other treatment processes. The adjustment of fluoride ion content, special treatment for iron and manganese reduction, special methods for taste and odor control, demineralization, and other proposals covering other treatment processes will be considered on an individual basis, pursuant to §290.39(g) of this title (relating to General Provisions). Package-type treatment systems and their components shall be subject to all applicable design criteria in this section. Where innovative/alternate treatment systems are proposed, the licensed ~~registered~~ professional engineer must provide pilot test data, data collected at similar full-scale operations, and proof of a one year manufacturers performance warrantee/guarantee assuring that the plant will produce an effluent of 0.5 NTU or less in at least 95% of the measurements taken each month. Pilot test data must

be representative of the actual operating conditions which can be expected over the course of the year.

(g)-(j) (No change.)

§290.43. *Water Storage.*

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

(c) Design and construction of clear wells, standpipes, ground storage tanks, and elevated tanks. All facilities for potable water storage shall be covered and designed, fabricated, erected, tested and disinfected in strict accordance with current American Water Works Association (AWWA) standards and shall be provided with the minimum number, size and type of roof vents, man ways, drains, sample connections, access ladders, overflows, liquid level indicators and other appurtenances as specified in these rules. Bolted tanks shall be designed, fabricated, erected and tested in strict accordance with current AWWA Standard D103. The roof of all tanks shall be designed and erected so that no water ponds at any point on the roof and, in addition, no area of the roof shall have a slope of less than 0.75 inch per foot.

(1) (No change.)

(2) All roof openings shall be designed in accordance with current AWWA standards. If an alternate 30 inch diameter access opening is not provided in a storage tank, the primary roof access opening shall not be less than 30 inches in diameter. Other roof openings required only for ventilating purposes during cleaning, repairing or painting operations shall be not less than 24 inches in diameter or as specified by the licensed [registered] professional engineer. An existing tank without a 30-inch in diameter access opening must be modified to meet this requirement when major repair or maintenance is performed on the tank. Each access opening shall have a raised curbing at least four inches in height with a lockable cover that overlaps the curbing at least two inches in a downward direction. Where necessary, a gasket shall be used to make a positive seal when the hatch is closed. All hatches shall remain locked except during inspections and maintenance.

(3)-(7) (No change.)

(8) All clear wells, ground storage tanks, standpipes, and elevated tanks shall be painted, disinfected, and maintained in strict accordance with current AWWA standards. However, no temporary coatings, wax grease coatings, or coating materials containing lead will be allowed. No other coatings will be allowed which are not approved for use (as a contact surface with potable water) by [the United States Public Health Service (USPHS),] the United States Environmental Protection Agency (EPA), National Sanitation Foundation (NSF), or the United States Food and Drug Administration (FDA). All newly installed coatings must conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(9)-(10) (No change.)

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

§290.44. *Water Distribution.*

(a) Design and standards. All potable water distribution systems including pump stations, mains, and both ground and elevated storage tanks, shall be designed, installed and constructed in accordance with current American Water Works Association (AWWA) standards with reference to materials to be used and construction procedures to be followed. In the absence of AWWA standards, commission review may be based upon the standards of the American Society for Testing and Materials (ASTM), commercial and other recognized standards utilized by licensed [registered] professional engineers.

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

(b) (No change.)

(c) Minimum water line sizes. These are minimum requirements for domestic flows only and do not consider fire flows. These requirements should be exceeded when the licensed [registered] professional engineer deems it necessary. It should be noted that the required sizes are based strictly on the number of customers to be served and not on the distances between connections or differences in elevation or the type of pipe. No new water line under two inches in diameter will be allowed to be installed in a public water system distribution system. These minimum line sizes do not apply to individual customer service lines.

Figure §290.44(c)

(d) (No change.)

(e) Location of water lines.

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

(5) Where the nine foot separation distance cannot be achieved, the following criteria shall apply:

(A) New Waterline Installation - Parallel Lines.

(i) Where a new potable waterline parallels an existing, non-pressure or pressure rated wastewater line/force main and the licensed [registered] professional engineer is able to determine that the existing line is not leaking, the new potable waterline shall be located at least two feet above the existing line, measured vertically, and at least four feet away, measured horizontally, from the existing line. Every effort shall be exerted not to disturb the bedding and backfill of the existing wastewater line.

(ii) Where a new potable waterline parallels an existing pressure rated wastewater line and it cannot be determined by the licensed [registered] professional engineer if the existing line is leaking, the existing wastewater line shall be replaced with a 150 psi pressure rated pipe. The new potable waterline shall be located at least two feet above the new wastewater line, measured vertically, and at least four feet away, measured horizontally, from the replaced wastewater line.

(iii) (No change.)

(B) (No change.)

(6)-(9) (No change.)

(f)-(h) (No change.)

(i) Water hauling. When drinking water is distributed by tank truck or trailer, it must be accomplished in the following manner:

(1) (No change.)

(2) The equipment used to haul the water must be approved by the executive director and must be constructed as follows:

(A) (No change.)

(B) The tank shall be watertight and of an approved material which is impervious and easily cleaned and disinfected. Any paint or coating and any plastic or fiberglass materials used as contact surfaces must be approved by the United States Environmental Protection Agency, the United States Food and Drug Administration, [the United States Public Health Service] or the National Sanitation Foundation. Effective January 1, 1993, any newly installed surfaces shall conform to ANSI/NSF Standard 61 and must be certified by an organization accredited by ANSI.

(C)-(L) (No change.)

§290.45. *Minimum Water System Capacity Requirements.*

(a)-(f) (No change.)

(g) Exceptions. Requests for exceptions to one or more of these Minimum Water System Capacity Requirements shall be considered on an individual basis. Any water system which requests an exception must demonstrate to the satisfaction of the executive director that the exception will not compromise the public health or result in a degradation of service or water quality as specified in §290.39(i) of this title (relating to General Provisions).

(1) (No change.)

(2) Although elevated storage is the preferred method of pressure maintenance for systems of over 2,500 connections, it is recognized that local conditions may dictate the use of alternate methods utilizing hydropneumatic tanks and on-site emergency power equipment. Exceptions to the elevated storage requirements may be obtained based on application to and approval of the executive director. Special conditions apply to systems qualifying for an elevated storage exception.

(A) The system must submit documentation sufficient to assure that the alternate method of pressure maintenance is capable of providing a safe and uninterrupted supply of water under pressure to the distribution system during all demand conditions.

(i) A signed and sealed statement by a licensed [registered] professional engineer must be provided which certifies that the pressure maintenance facilities are sized, designed and capable of providing a minimum pressure of at least 35 psi at all points within the distribution network at flow rates of 1.5 gpm per connection or greater. In addition, the engineer must certify that the emergency power facilities are capable of providing the greater of the average daily demand or 0.35 gpm per connection while maintaining distribution pressures of at least 35 psi, and that emergency power facilities powering production and treatment facilities are capable of supplying at least 0.35 gpm per connection to storage.

(ii) The system's licensed [registered] professional engineer must conduct a hydraulic analysis of the system under peak conditions. This must include an analysis of the time lag between the loss of the normal power supply and the commencement of emergency power as well as the minimum pressure that will be maintained within the distribution system during this time lag. In no case shall this minimum pressure within the distribution system be less than 20 psi. The results of this analysis must be submitted to the commission for review.

(iii) For existing systems, the system's licensed [registered] professional engineer must provide continuous 24 hour pressure chart recordings of distribution pressures maintained during past power failures, if available. The period reviewed should not be less than three years.

(B)-(D) (No change.)

(3) (No change.)

§290.46. *Minimum Acceptable Operating Practices for Public Drinking Water Systems.*

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

(j) Customer Service Inspections. Effective January 1, 1996, a customer service inspection certification shall be completed prior to providing continuous water service to new construction, on any existing service when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards [~~unacceptable~~

~~plumbing practices~~] exist, or after any material improvement, correction, or addition to the private water distribution [~~plumbing~~] facilities. See §290.47(d) of this title (relating to Appendices).

(1) (No change.)

(2) As potential contaminant hazards [~~unacceptable plumbing practices~~] are discovered, they shall be promptly eliminated to prevent possible contamination of the water supplied by the public water system. The existence of a serious threat to the integrity of the public water supply shall be considered sufficient grounds for immediate termination of water service. Service can be restored only when the source of potential contamination no longer exists, or until sufficient additional safeguards have been taken.

(3) Copies of properly completed inspection certifications must be kept on file by the water purveyor and made available, upon request, for commission review. These certifications shall be retained for a minimum of ten years. If the suggested certification form (see Appendix D) is not used, the Inspection Certifications must minimally include the name and registration number of the inspector, the type of registration (Plumbing Inspectors, Water Supply Protection Specialists, Certified Operator, etc.), and be dated and signed. It must also certify that:

(A) No direct connection between the public drinking water supply and a potential source of contamination exists. Potential sources of contamination are isolated from the public water system by an air-gap or an appropriate backflow prevention assembly in accordance with commission regulations. See §290.44(h) of this title (relating to Backflow, siphonage). [~~state plumbing regulation. Additionally, all pressure relief valves and thermal expansion devices are in compliance with state plumbing codes.~~]

(B)-(C) (No change.)

(D) No pipe or pipe fitting which contains more than 8.0% percent lead exists in private water distribution [~~plumbing~~] facilities installed on or after July 1, 1988.

(E) No solder or flux which contains more than 0.2% percent lead exists in private water distribution [~~plumbing~~] facilities installed on or after July 1, 1988.

[(F) No plumbing fixture is installed which is not in compliance with a state-approved plumbing code.]

(4) These customer service inspection requirements are not considered acceptable substitutes for and shall not apply to the sanitary control requirements stated in §290.115(5) of this title.

(5) A customer service inspection is an examination of the private water distribution facilities for the purpose of providing or denying water service. This inspection is limited to the identification and prevention of cross connections, potential contaminant hazards and illegal lead materials. The customer service inspector has no authority, and no obligation, beyond the scope of the commission's regulations. A customer service inspection is not a plumbing inspection as defined and regulated by the Texas State Board of Plumbing Examiners (TSBPE). A customer service inspector is not permitted to perform plumbing inspections. State statutes and TSBPE adopted rules require that TSBPE licensed plumbing inspectors perform plumbing inspections of all new plumbing and alterations or additions to existing plumbing within the municipal limits of all cities, towns and villages with 5,000 or more inhabitants or within smaller, like entities which have adopted the Plumbing License Law by ordinance. Such entities may stipulate that the customer service inspection be performed by the plumbing inspector as a part of the more comprehensive plumbing inspection. Where such

entities permit customer service inspectors to perform customer service inspections, the customer service inspector should report any violations immediately to the local entity's plumbing inspection department.

(k)-(q) (No change.)

(r) Data on water system ownership and management. The commission shall be provided with information regarding water system ownership and management.

(1) When a water system changes ownership, a written notice of the transaction must be provided to the commission. When applicable, notification shall be in accordance with Chapter 291 of this title (relating to Utility Regulation [Water Rates and Services]). Those systems not subject to Chapter 291 of this title shall notify the commission of changes in ownership by providing the name of the current and prospective owner or responsible official, the proposed date of the transaction, and the address and phone number of the new owner or responsible official. The information listed above and the system's public drinking water supply identification number, and any other information necessary to properly identify the transaction shall be provided to the commission 120 days before the date of the transaction.

(2) (No change.)

(s)-(y) (No change.)

§290.47. *Appendices.*

(a) Appendix A. Recognition as a Superior or Approved Public Water System.
Figure: 30 TAC §290.47(a)

(b) Appendix B. Sample Service Agreement.
Figure: 30 TAC §290.47(b)

(c) Appendix C. Sample Sanitary Control Easement Document for a Public Water Well.
Figure: 30 TAC §290.47(c)

(d) Appendix D. Sample Service Inspection Certification.
Figure: 30 TAC 290.47(d)

(e) Appendix E. Boil Water Notification.
Figure: 30 TAC 290.47(e)

(f) Appendix F. Sample Backflow Prevention Assembly Test and Maintenance Report.
Figure: 30 TAC §290.47(f)

(g) Appendix G. Operator and/or Employment Notice.
Figure: 30 TAC 290.47(g)

(h) Appendix H. Special Precautions Flowchart.
Figure: 30 TAC 290.47(h)

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 October 5, 1998.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter F. Drinking Water Standards Governing Drinking Water Quality and Reporting Requirements for Public Water Supply Systems

30 TAC §290.102, §290.116

The amendments are proposed under Texas Water Code, §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Health and Safety Code §341.031 which gives the commission the power to establish standards for public drinking water and to adopt rules to implement the federal Safe Drinking Water Act.

There are no other rules, statutes or codes that will be affected by this proposal.

§290.102. *Definitions.*

The following definitions shall apply in the interpretation and enforcement of these standards. If a word or term used in this subchapter is not contained in the following list, its definition shall be as shown in 30 TAC §290.38 or in Title 40 Code of Federal Regulations §141.2. Other technical terms used shall have the meanings or definitions listed in the latest edition of "Glossary, Water and Wastewater Control Engineering," prepared by a joint editorial board representing the American Public Health Association, American Society of Civil Engineers, American Water Works Association, and the Water Pollution Control Federation.

[Approved laboratory - Approved laboratory - A laboratory certified and approved by the Texas Department of Health to analyze water samples to determine their compliance with maximum allowable constituent levels.]

Commission - the Texas Natural Resource Conservation Commission.]

[Community water system - A public water system which has a potential to serve at least 15 service connections on a year-round basis or serves at least 25 individuals on a year-round basis. Service connections shall be counted as one for each single family residential unit or each commercial or industrial establishment to which drinking water is supplied from the system.]

[Drinking water - All water distributed by any agency or individual, public or private, for the purpose of human consumption or which may be used in the preparation of foods or beverages or for the cleaning of any utensil or article used in the course of preparation or consumption of food or beverages for human beings. The term "Drinking Water" shall also include all water supplied for human consumption or used by any institution catering to the public.]

[Entry Point - An entry point to the distribution system is a point which is representative of the water from each well after treatment or for surface water systems or a combination of surface and groundwater systems; a point which is representative of each source of treatment point after any application of treatment.]

[Executive Director - The executive director of the Commission.]

(1) Halogen - means one of the chemical elements chlorine, bromine, or iodine.

[Human consumption - Uses by humans in which water can be ingested into or absorbed by the human body. Examples of these uses include, but are not limited to drinking, cooking, brushing teeth, bathing, washing hands, washing dishes and preparing foods.]

[MCL - An acronym for Maximum Contaminant Level.]

[Monthly Reports of Water Works Operations - The daily record of data relating to the operation of the system facilities compiled in a monthly report.]

[Non-community water system - Any public water system which is not a community water system.]

[Non-transient non-community water system or "NTNCWS" - A public water system that is not a community water system and that regularly serves at least 25 of the same persons over six months per year.]

[Public water system - A system for the provision to the public of piped water for human consumption. Such a system must have a potential to serve at least 15 service connections or 25 individuals at least 60 days out of the year. This term includes any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Two or more water systems with each having a potential to serve less than 15 connections or less than 25 individuals but owned by the same person, firm or corporation and located on adjacent land will be considered a public water system when the total potential service connections in the combined systems are 15 or greater or if the total number of individuals served by the combined systems total 25 or more at least 60 days out of the year. Without excluding other meanings of the terms "individual" or "served," an individual shall be deemed to be served by a water system if he resides in, uses as his place of employment, or works in, a place to which drinking water is supplied from the system. A public water system is either a "community water system" or a "noncommunity water system" as defined in this section.]

[Repeat Compliance Period Any subsequent compliance period after the initial compliance period.]

[Sanitary survey - An onsite review of the water source, facilities, equipment, operation and maintenance of a public water system; for the purpose of evaluating the adequacy for producing and distributing safe drinking water.]

(2) Total Trihalomethanes (TTHM) - means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, i.e., chloroform; dibromochloromethane; bromodichloromethane; tribromomethane, i.e., bromoform) rounded to two significant figures.

(3) Trihalomethane (THM) - means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.

§290.116. Control of Trihalomethanes in Drinking Water.

{(a) For the purpose of this section the following definitions will apply:}

{(1) "Halogen" means one of the chemical elements chlorine, bromine, or iodine.}

{(2) "Trihalomethane" (THM) means one of the family of organic compounds named as derivatives of methane, wherein three of the four hydrogen atoms in methane are each substituted by a halogen atom in the molecular structure.}

{(3) "Total Trihalomethanes" (TTHM) means the sum of the concentration in milligrams per liter of the trihalomethane compounds (trichloromethane, i.e., chloroform; dibromochloromethane;

bromodichloromethane; tribromomethane, i.e., bromoform) rounded to two significant figures.}

{(4) "Maximum Total Trihalomethane Potential" (MTP) means the maximum concentration of total trihalomethanes produced in a given water containing a disinfectant residual after seven days at a temperature of 25° C or above.}

{(5) "Disinfectant" means any oxidant added to water in any part of the treatment or distribution process, that is intended to kill or inactivate pathogenic microorganisms.}

(a) [(b)] The maximum contaminant level (MCL) for total trihalomethanes shall be 0.10 milligrams/liter. The MCL shall apply only to those systems which serve a population of 10,000 or more individuals.

(b) [(c)] Sampling and analytical requirements for total trihalomethanes:

(1) For the purpose of this section, the minimum number of samples required to be taken shall be based on the number of treatment plants used by the system, except that multiple wells drawing raw water from a single aquifer shall be considered as one treatment plant for determining the minimum number of samples. All samples taken within one sampling period shall be collected within a 24-hour period.

(2) For all community water systems utilizing surface water sources in whole or in part, and for all water systems utilizing only groundwater sources that have not been determined to qualify for the reduced monitoring requirements of paragraph (4) of this subsection, analyses for total trihalomethanes shall be performed on at least four samples of water per quarter from each treatment plant used by the system. At least 25% of the samples shall be taken at locations within the distribution system reflecting the maximum residence time of the water in the system. The remaining 75 percent shall be taken at representative locations in the distribution system, taking into account number of persons served, different sources of water, and different treatment methods employed. The results of all analyses per quarter shall be arithmetically averaged and reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used in computing the average, unless the analytical results are invalidated for technical reasons.

(3) Upon the written request of a community water system, the monitoring frequency required by paragraph (2) of this subsection may be reduced by the commission to a minimum of one sample analyzed for TTHM's per quarter taken at a point in the distribution system reflecting the maximum residence time of the water in the system, upon a written determination by the commission that the data from at least one year of monitoring in accordance with paragraph (2) of this subsection and local conditions demonstrate that total trihalomethane concentrations will be consistently below the maximum contaminant level.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection applies, the results from any analysis exceed 0.10 milligrams/liter of TTHM's and such results are confirmed by at least one check sample taken promptly after such results are obtained, or if the system makes any significant change to its source of water or treatment program, the system shall immediately begin monitoring in accordance with the requirements of paragraph (2) of this subsection.

(B) If a system is required to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring

shall continue for at least one year before a reduction in monitoring frequency may be considered.

(4) Upon the written request to the commission, a community water system utilizing only groundwater sources may seek to have the monitoring frequency reduced to a minimum of one sample for maximum TTHM potential per year taken at a point in the distribution system reflecting maximum residence time of the water in the system. The system shall submit to the commission the results of at least one sample analyzed for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system. The system's monitoring frequency may only be reduced upon a written determination by the commission that, based upon the data submitted by the system, the system has a maximum TTHM potential of less than 0.10 milligrams/liter and that, based upon an assessment of the local conditions of the system, the system is not likely to approach or exceed the maximum contaminant level for TTHM's. The results of all analyses shall be reported to the commission within 30 days of the system's receipt of such results. All samples collected shall be used for determining whether the system must comply with the monitoring requirements of paragraph (2) of this subsection, unless the analytical results are invalidated for technical reasons.

(A) If at any time during which the reduced monitoring frequency prescribed under this subsection is in effect, the result from any analysis taken by the system for the maximum TTHM potential is equal to or greater than 0.10 milligrams/liter, and such results are confirmed by at least one check sample taken promptly after such results are received, the system shall begin immediately to monitor in accordance with the requirements of paragraph (2) of this subsection.

(B) If it becomes necessary to begin monitoring in accordance with paragraph (2) of this subsection, such monitoring shall continue for at least one year before the monitoring frequency may be reduced.

(C) In the event of any significant change to the system's raw water or treatment program, the system shall immediately analyze an additional sample for maximum TTHM potential taken at a point in the distribution system reflecting the maximum residence time of the water in the system for the purpose of determining whether the system must comply with the monitoring requirement of paragraph (2) of this subsection.

(5) Compliance with the MCL of 0.10 milligrams/liter for total trihalomethanes shall be determined based on a running annual average of quarterly samples collected by the system as prescribed in paragraph (2) of this subsection. If the average of samples covering any 12-month period exceeds the maximum contaminant level, the supplier of water shall report to the commission within 30 days and notify the public as required under §290.103(8) of this title (relating to Standards of Chemical Quality). Monitoring after public notification shall be at a frequency designated by the commission and shall continue until a monitoring schedule as a condition of a variance, exemption, or enforcement action shall become effective.

(6) Before a community water system makes any significant modification to its existing treatment process for the purpose of achieving compliance with this subsection, the system must submit and obtain commission approval of a detailed plan setting forth its proposed modifications and those safeguards that it will implement to ensure that the bacteriological quality of the drinking water served by such system will not be adversely affected by such modifications.

(7) All analyses for determining compliance with the provisions of this subsection shall be conducted in accordance with the procedures required by the U.S. Environmental Protection Agency.

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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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



Chapter 291. [Water Rates] Utility Regulations

Subchapter A. General Provisions

The commission proposes amendments to §§291.1, 291.3, 291.21, 291.25, 291.29, 291.31, 291.32, 291.41, 291.76, 291.87, 291.93, 291.101, 291.102, 291.103, 291.106, 291.107, 291.109, 291.111, 291.113, 291.114, 291.121-291.127, 291.138, the repeal of §§291.15, 291.16, and a new §§291.15, 291.34, 291.140, 291.144, 291.150-291.153.

EXPLANATION OF THE PROPOSED RULE

The purpose of the proposed amendments is to implement sections of Senate Bill 1, Article 6, 75th Legislature 1997, related to ensuring the technical, managerial and financial capacity of public water and sewer utility service providers and rate flexibility; streamline or clarify existing rules, and update references and definitions.

The provisions of the current §291.15, relating to Jurisdiction of Municipality: Surrender of Jurisdiction, are proposed to be moved to a new §291.150, relating to Jurisdiction of Municipality: Surrender of Jurisdiction. A new provision is proposed for §291.15, Notice of Wholesale Water Supply Contract. This section is proposed to implement new Texas Water Code §13.143 enacted by S.B. 1 (1997). The provisions of the current §291.16, relating to Applicability of Commission Service Rules Within the Corporate Limits of a Municipality, are proposed to be moved to a new §291.151, relating to the same subject matter.

Section 291.21, relating to Form and Filing of Tariffs, adds provisions regarding rate adjustments to implement phased rates under §291.34, relating to Alternative Rate Methods, and downward rate adjustments to the list of minor changes the executive director may make to tariffs. Subsection (c)(8) is added to add the requirement that the tariff must address the form of payments that will be accepted for utility services.

Section 291.29, relating to Interim Rates, is proposed to be reworded to clarify that certain actions taken by the commission may also be taken by an administrative law judge as provided by Texas Water Code §5.311, as amended by Senate Bill 1 (1997). The section also updates references to the State Office of Administrative Hearings. Both the word Judge and SOAH are defined in Chapter 3 of this Title, relating to Definitions. This section also makes other minor amendments designed to clarify meaning.

Section 291.31, relating to Cost of Service, is proposed to be amended to provide that a utility that has paid fines or penalties into a Water Utility Improvement Account under §291.144(b), related to Water Utility Improvement Account, cannot consider those funds as invested capital in a rate case. Subsection (e) provides for, over and above what is allotted under traditional cost of service in a rate case, a positive acquisition adjustment for utility plant, property and equipment acquired from another retail public utility in a sale and transfer of utility service areas. A positive acquisition adjustment is proposed to remove a disincentive for utilities to combine to provide regional service. The subsection provides eligibility criteria for when an acquisition adjustment is allowed, a methodology for calculating the amount of the adjustment, and procedural requirements. The proposed rule would only allow an acquisition adjustment for a sale and transfer of a utility that occurs after the effective date of the adopted rule. The commission invites comments on whether positive acquisition adjustments should be allowed for a sale and transfer of a utility that occurred after the effective date of S.B.1, 75th Legislature (1997) but before the effective date of the adopted rules and also invites comments on the commission's legal authority to grant such a positive acquisition adjustment for transfers prior to the effective date of the final rule.

The commission also invites comments on whether positive acquisition adjustments should also be allowed where the purchase of a utility is accomplished only by a sale of stock. The proposed rule, 291.31(d), relating to Recovery of positive acquisition adjustment, would allow a positive acquisition adjustment for transfers where the utility is acquired through a stock purchase with a concurrent asset transfer. However, the commission invites comment on how, under those circumstances, the commission would evaluate the corporate debt, receivables, deposits, corporate good will and assets other than property, plant, and equipment.

Amendments to §291.32, relating to Rate Design, authorize a utility to seek and obtain, in a rate change proceeding, a water conservation surcharge. The water conservation surcharge would allow a utility to generate revenue above the utility's usual cost of service as authorized by Texas Water Code §13.183, as amended by Senate Bill 1 (1997). The subsection sets out criteria for when a water conservation surcharge would be permissible, and establishes restrictions on the disposition of funds collected by the surcharge. Subsection (d) provides that the commission may, in a rate proceeding, authorize collection of an additional surcharge to provide funds for debt repayments and reserve funds.

The proposed new §291.34, relating to Alternative Rate Methods, implements Texas Water Code §13.183 and §13.184, as amended by S.B. 1 (1997), which authorize the commission to set utility rates on factors other than rate of return and those specified in Texas Water Code §13.185. The proposed new section implements three non-traditional rate methods: single issue rate changes, phased and multi-step rate changes, and the cash needs method. The single issue rate change allows a utility to file a simplified rate case limited to only one issue. A utility may wish to consider a single issue rate change when faced with unanticipated cost increases in a single cost category. Phased and multi-step rate changes allow a utility to phase in a rate increase in one rate case rather than filing several separate rate cases. The cash needs method of rate setting allows the recovery of reasonable and prudently incurred debt

service cost, including principal, interest, and reasonable cash reserves and other expenses not allowed under standard methods of establishing rates. The proposed new section sets out criteria and conditions for the use of each of these alternative rate methods.

The commission intends that the alternative rate method of §291.34, if finally adopted by the commission, would be available only for rate applications filed after the effective date of the final rule. Rate applications filed before the effective date of the final rule must use the traditional rate methods specified in the current rules.

Amendments to §291.41, relating to Appeal of Ratemaking Pursuant to the Texas Water Code §13.043, update statutory references, add a notice requirement, and are intended to relate to actions for which the commission has express statutory authority. The notice requirement expressly provides for the existing practice of the commission to require the retail public utility to provide written notice of a hearing to all customers, rather than having notice provided by the Chief Clerk.

Amendments to §291.76, relating to Regulatory Assessment, are intended to require the utility to remit the regulatory assessment fee to the commission on an annual basis rather than allowing the utility the option of paying on a quarterly basis and to remove the allowance for retaining ten percent when payments are made quarterly, in order to be consistent with statutory authority.

Proposed amendments to §291.87, relating to Billing, set out procedures for a utility to implement a voluntary program to collect voluntary contributions to a volunteer fire department or emergency medical service as part of the utility's regular customer bill.

Proposed amendments to §291.93, relating to Adequacy of Water Utility Service, change the time for filing a report from 120 days to 90 days from the time the retail public utility receives a copy of the commission field inspection report indicating that the system capacity has reached 85 percent, in order to be consistent with statutory authority.

Amendments to Subchapter G, relating to Certificates of Convenience and Necessity, implement provisions of S.B.1, Article 6, 75th, Legislature, 1997. Section 291.101, relating to Certificate Required, would add a condition that a water district may not provide service within an area where a retail public utility holds a certificate of convenience and necessity, or within the boundaries of another water district, without the district's consent unless the water district proposing to provide service has obtained a certificate of convenience and necessity for that area from the commission. Amendments to §291.102, relating to Criteria for Considering and Granting Certificates or Amendments, update the section to conform to amendments to Texas Water Code §13.241 and §13.246 made by Senate Bill 1 (1997) and to add requirements to demonstrate that regionalization or consolidation is not economically feasible. Amendments to §291.103, relating to Certificates Not Required, update the section to conform to amendments to Texas Water Code §49.352. The proposed amendments to §291.109, relating to Report of Sale, Merger, Etc; Investigation; Disallowance of Transaction, add requirements for the applicant in a sale or merger of a water or sewer system to demonstrate the financial, managerial, and technical capability to provide continuous and adequate service. If the entity acquiring the system cannot demonstrate adequate financial capability, the commission may require the provision of

a bond or other financial assurance in an amount determined by the commission. The form of the bond or financial assurance will be as provided in the proposed new Subchapter M to Chapter 37 of this Title, related to Financial Assurance for a Public Drinking Water Systems and Utilities. The proposed amendments to §291.111, relating to Purchase of Voting Stock in Another Utility, are similar to the provisions of §291.109, except those provisions relate to purchase of a water system by transferring of voting stock in a utility. Proposed amendments to §291.113, relating to Revocation or Amendment of Certificate, implement Texas Water Code §13.254 as amended by Senate Bill 1 (1997), and generally track that statute. Other amendments in this subchapter update references to current statutes.

Section 291.106(b)(1), relating to Notice for Application for Certificates of Convenience and Necessity, provides that cities and other retail public utilities within a specified distance from the proposed service area must receive notice of an application for issuance or amendment of a certificate of public convenience and necessity. The proposed rule increases the specified distance from a two mile radius to a five mile radius for applications for a new Certificate of Convenience and Necessity. By this proposed amendment, the commission intends in applications for Certificates of Convenience and Necessity to solicit comment from a wider audience on the appropriateness of the proposed system versus regional service from an existing system. The commission believes that a more rigorous inquiry on regionalization than is the current practice is legislatively mandated by Health and Safety Code 341.0315(b) and Water Code §26.003. The commission invites comments on the appropriateness of the proposed five mile radius versus some other distance limitation and invites comments on other options to encourage regionalization of water or wastewater service.

The proposed Subchapter H, relating to Utility Submetering, would revise the rules related to water and wastewater charges passed through to tenants by an apartment house, condominium, mobile home park, or other multiple use facility. The rules cover situations where utility service is master metered to the owner, who in turn allocates the utility bill to individual units based on submetering or an approved allocation method. Revisions are proposed to streamline the rules, incorporate allocation methods which more accurately reflect water usage, and to reword sections to clarify the intent of the rules. Under the proposed rules, utility service may be allocated on: a submetered basis, an occupancy basis, a proportional submetered hot water basis, or other method approved by the executive director. Where service is not submetered and outside water use is not separately metered, an owner may only pass through 85% of the utility bill to tenants.

Section 291.138, relating to Filing of Rate Data, is proposed for amendment to remove a requirement that providers of water or sewer service for resale must file an annual report. In place of the mandatory report, the proposed rule would allow the commission the option to require that a report be filed. Providers of water or sewer service for resale would only have to file a report within 30 days of receiving a written request for the report from the executive director.

FISCAL NOTE

Stephen Minick, Strategic Planning and Appropriations Division, has determined that for the first five years the sections as proposed are in effect, there will be fiscal implications as a result of enforcement and administration of the sections. The effect on

state government will be an increase in cost of approximately \$242,258 per year in the first year, and \$231,310 in years two through five, associated with additional requirements of the rules, including an anticipated increase in rate cases filed with the agency as water and sewer utilities seek to avail themselves of the provisions allowing alternative methods of setting rates. In addition, the proposed change related to the timing of fee payments will result in a one-time deferral of revenue to the commission of approximately \$1.67 million in utility regulatory assessments. The proposed repeal of the provision for the retainage of fees by utilities will increase revenues to the commission by approximately \$200,000 per year. There are no significant effects anticipated for local governments, except those local governments, such as districts, that are water utilities subject to the sections as proposed. Any local government or district subject to the payment of a utility regulatory assessment will realize an increase in cost of 10% of the assessment if the utility has been making quarterly payments and taking the allowable retainage under the current rules.

PUBLIC BENEFIT

Mr. Minick also has determined that for the first five years the sections as proposed are in effect the public benefit anticipated as a result of enforcement of and compliance with these sections will be an increase in water and sewer utilities that have the financial capability to comply with state and federal regulations related to drinking water and wastewater quality, more cost effective delivery of water and sewer services to ratepayers, and enhanced protection of public health, safety and convenience related to the provision of adequate water utility services. The proposed rule will have cost implications for affected persons. Utilities will generally benefit financially from the opportunity to procure approval for alternative rate structures which ensure the financial stability and viability of the system. Although the number of utilities that will be required to have financial assurance under these rules is small, those entities which are required to obtain such assurance are anticipated to face increased costs equivalent to between one-half and ten percent of the principal amount of the assured amount annually, depending on the individual system and the associated risks. The estimated costs for an average system operator to prepare a rate application is not anticipated to increase from the present cost to prepare a rate application under the existing rules. The proposed rule does affect small businesses, particularly investor-owned utilities (IOUs) that supply public drinking water or sewer service as their business. These small businesses will realize the same fiscal effects of the proposed rule as any water or wastewater system operator. Due to the smaller size of the operations, however, the costs of compliance with these rules may be marginally higher as a function of labor costs, costs per employee or costs per unit of revenue. There are no other anticipated costs to any person required to comply with this section as proposed.

DRAFT REGULATORY IMPACT ANALYSIS

The commission has reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225 and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of "major environmental rule" because the specific intent of the amendment is to regulate water and sewer service utilities and not to protect the environment or reduce risks to human health from environmental exposure. The provisions in the proposed rules related to demonstrating the technical,

managerial, and financial capacity of utilities are in partial response to the federal Safe Drinking Water Act Amendments of 1996, and are also specifically required by S.B.1, Article 6, 75th Leg. 1997. The proposed rules do not exceed an express requirement of state or federal law.

TAKINGS IMPACT ASSESSMENT

The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that Assessment. The specific purpose of the rule is to implement sections of S.B.1, Article 6 related to ensuring the technical, managerial and financial capacity of utilities; to allow the commission to set water and sewer utility rates based on factors other than rate of return and those specified in Texas Water Code §13.185; streamline existing rules and to make the rules consistent with recent statutory changes. The rules will substantially advance this specific purpose by requiring applicants for certificates of convenience and necessity to demonstrate or provide financial assurance of its ability to provide service; specifying alternative rate methodologies for water and sewer utilities; eliminating certain required reports to the agency; clarifying existing rules; and amending rules to reflect recent legislative changes. Promulgation and enforcement of these rules will not burden private real property because the requirement to demonstrate its ability to provide service is a procedural requirement designed to demonstrate the financial capability of the utility; and because existing methodologies for setting water or sewer rates are retained in effect. The proposed rules only provide additional methodologies that a water or sewer utility may choose to use in a rate case.

CONSISTENCY WITH THE COASTAL MANAGEMENT PROGRAM

The commission has reviewed the proposed rulemaking and found that the rule is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11, relating to Actions and Rules Subject to the Coastal Management Program (CMP), nor will it affect any action or authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11. Therefore, the proposed rule is not subject to the CMP.

RULES REVIEW

The commission, concurrently with these proposed amendments to Chapter 291, proposes the review of Chapter 291, concerning Water Rates. This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. See the Rules Review section of this issue of the *Texas Register* for additional information on the rules review of this Chapter.

PUBLIC HEARING

A public hearing on these proposals will be held on November 2, 1998, at 10:00 a.m. in Building F, Room 2210 at the Texas Natural Resource Conservation Commission complex, located at 12100 North IH-35, Park 35 Circle, Austin, Texas 78753. Individuals may present oral statements when called upon in order of registration. Open discussion with the audience will not occur during the hearings; however, a staff member will be available to discuss the proposal 30 minutes prior to each hearing and will answer questions before and after the hearings.

SUBMITTAL OF COMMENTS

Written comments may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Wayne Wiley, Water Utilities Division, at (512) 239-6960.

30 TAC §§291.1, 291.3, 291.15

STATUTORY AUTHORITY

The rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Subchapter H §§291.121-291.127 are also proposed under Texas Water Code §13.503 and §13.5031 which require the commission to adopt rules and standards governing allocating utility service costs from a master meter. Section 291.15 implements Texas Water Code 13.143. Section 291.31 implements Texas Water Code §13.183. Section 291.34 implements Texas Water Code §13.183 and §13.184. Section 291.87 implements Texas Water Code §13.143. Section 291.101 implements Texas Water Code §49.215(d). Section 291.102 implements Texas Water Code §13.241 and §13.246. Section 291.103 implements Texas Water Code §49.352. Section 291.109 implements Texas Water Code §13.301. Section 291.111 implements Texas Water Code §13.302. Section 291.113 implements Texas Water Code §13.254. Section 291.114 implements Texas Water Code 13.252. Section 291.125(c) implements Texas Water Code §13.504. Section 291.140 implements Texas Water Code §13.411. Section 291.144 implements Texas Water Code §13.418 and Texas Health and Safety Code §341.0485. Section 291.152 implements Texas Water Code §13.045. Section 291.153 implements Texas Water Code §13.086.

There are no other statutes, codes or rules that will be affected by this rule.

§291.1. Purpose and Scope of this Chapter.

This chapter is intended to establish a comprehensive regulatory system under Texas Water Code Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the [Water] commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

§291.3. Definitions.

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

- (1) Acquisition adjustment - The difference between:

(A) The lesser of the purchase price paid by an acquiring utility, or amount determined by the regulatory authority to be reasonable, and

(B) The original cost of the plant, property and equipment being acquired, less accumulated depreciation.

(2) Affected County - A county:

(A) That has a per capita income that averaged 25 percent below the state average for the most recent three consecutive years for which statistics are available and an unemployment rate that averaged 25 percent above the state average for the most recent three consecutive years for which statistics are available; and,

(B) Any part of which is within 50 miles of an international border.

(3) Affected person - Any retail public utility affected by any action of the regulatory authority; any person or corporation, whose utility service or rates are affected by any proceeding before the regulatory authority; or any person or corporation that is a competitor of a retail public utility with respect to any service performed by the retail public utility or that desires to enter into competition.

(4) Affiliated interest or affiliate -

(A) Any person or corporation owning or holding directly or indirectly 5.0% or more of the voting securities of a utility;

(B) Any person or corporation in any chain of successive ownership of 5.0% or more of the voting securities of a utility;

(C) Any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by a utility;

(D) Any corporation 5.0% or more of the voting securities of which is owned or controlled directly or indirectly by any person or corporation that owns or controls directly or indirectly 5.0% or more of the voting securities of any utility or by any person or corporation in any chain of successive ownership of 5.0% of those utility securities;

(E) Any person who is an officer or director of a utility or of any corporation in any chain of successive ownership of 5.0% or more of voting securities of a public utility;

(F) Any person or corporation that the commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a utility or over which a utility exercises such control or that is under common control with a utility, such control being the possession directly or indirectly of the power to direct or cause the direction of the management and policies of another, whether that power is established through ownership or voting of securities or by any other direct or indirect means; or

(G) Any person or corporation that the commission, after notice and hearing, determines is exercising substantial influence over the policies and action of the utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated within the meaning of this section, even though no one of them alone is so affiliated.

(5) Agency - Any state board, commission, department, or officer having statewide jurisdiction (other than an agency wholly financed by federal funds, the legislature, the courts, the Industrial Accident Board, and institutions for higher education) which makes rules or determines contested cases.

(6) Allocations - For all retail public utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities, or between municipalities and unincorporated areas, where such items are used for providing water or sewer utility service in a municipality or for a municipality and unincorporated areas.

(7) Base rate - The portion of a consumer's utility bill which is paid for the opportunity of receiving utility service, excluding stand-by fees, which does not vary due to changes in utility service consumption patterns.

(8) Billing period - The usage period between meter reading dates for which a bill is issued or in nonmetered situations, the period between bill issuance dates.

(9) Class of service or customer class - A description of utility service provided to a customer which denotes such characteristics as nature of use or type of rate.

(10) Code - The Texas Water Code.

~~[Commission - The Texas Natural Resource Conservation Commission.]~~

(11) Corporation - Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the Texas Water Code.

(12) Customer - Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(13) Customer service line or pipe - The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

~~[Executive director - The executive director of the commission, or any authorized individual designated to act for the executive director.]~~

(14) Facilities - All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(15) Incident of tenancy - water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(16) License - The whole or part of any commission permit, certificate, registration or similar form of permission required by law.

(17) Licensing - The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission ~~[Texas Water Commission]~~ pursuant to its authority under the Texas Water Code.

(18) Main - A pipe operated by a utility service provider which is used for transmission or distribution of water or to collect or transport sewage.

(19) Mandatory Water Use Reduction - The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures which seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(20) Member - A person who holds a membership in a water supply or sewer service corporation and who ~~[either receives water or sewer utility service from the corporation or]~~ is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(21) Membership fee - A fee assessed each water supply or sewer service corporation service applicant which entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed pursuant to said bylaws. For purposes of Texas Water Code §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees or contributions in aid of construction.

(22) Municipality - A city, existing, created, or organized under the general, home rule, or special laws of this state.

(23) Municipally-owned utility - Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

~~[Permanent installation [- Any installation that is constructed or placed on and permanently affixed to a foundation, and which is, or will be, used or occupied on a permanent full-time basis. A manufactured home or prefabricated structure shall qualify as a permanent installation only if it is installed on a foundation system according to regulations of the Texas Department of Labor and Standards or is otherwise impractical to move and has the wheels, axles, and hitch or towing device removed, and if it is connected to a permanent water and sewer system.]~~

(24) Person - Any natural person, partnership, cooperative corporation, association, or public or private organization of any character other than an agency or municipality.

(25) Physician - Any public health official, including, but not limited to, medical doctors, doctors of osteopathy, nurse practitioners, registered nurses, and any other similar public health official.

(26) Point of use or point of ultimate use - The primary location where water is used or sewage is generated; for example a residence or commercial or industrial facility.

(27) Potable water - Water that is used for or intended to be used for human consumption or household use.

(28) Premises - A tract of land or real estate including buildings and other appurtenances thereon.

(29) Public utility - The definition of public utility is that definition given to water and sewer utility in this subchapter.

(30) Purchased sewage treatment - Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(31) Purchased water - Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(32) Rate - Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in the Texas Water Code §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(33) Ratepayer - Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(34) Reconnect fee - A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in ~~[291.87]~~ 291.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request.

(35) Retail public utility - Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(36) Retail water or sewer utility service - Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(37) Safe Drinking Water Revolving Fund - The fund established by the Texas Water Development Board to provide financial assistance in accordance with the Federal program established pursuant to the provisions of the Safe Drinking Water Act and as defined in Water Code §15.602.

~~(38) Service - Any [and all] acts[done, rendered, or] performed, anything [and any and all things] furnished or supplied, and any [and all] facilities used[, furnished, or supplied] by a retail public utility [utilities or water or sewer service suppliers] in the performance of its [their] duties under the Texas Water Code to its patrons [their customers], employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities [of the utilities or water or sewer service suppliers.]~~

(39) Service line or pipe - A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(40) Sewage - Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(41) Standby fee - A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(42) Tap fee - A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(43) Tariff - The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(44) Temporary Water Rate Provision - A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(45) Test year - The most recent 12 month period for which representative operating data for a retail public utility are available. A utility rate filing must be based on a test year that ended less than 12 months before the date on which the utility made the rate filing.

(46) Utility - The definition of utility is that definition given to water and sewer utility in this subchapter.

(47) Water and sewer utility - Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(48) Water rationing - Restrictions implemented to reduce the amount of water which may be consumed by customers of the system due to emergency conditions or drought.

(49) Water supply or sewer service corporation - Any nonprofit, ~~[member-owned, member-controlled]~~ corporation organized and operating under [Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Texas Civil Statutes, Article 1434a)] Chapter 67 of the Texas Water Code that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with by-laws or articles of incorporation which ensure that it is member-owned and member controlled. The term does not

include a corporation that provides retail water or sewer service to a person who is not a member, except that the corporation may provide retail water or sewer service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter and Texas Water Code, Chapter 13, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions:

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested;

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member;

(C) A majority of the directors and officers of the corporation must be members of the corporation; and

(D) The corporation's by-laws include language indicating the factors specified in subparagraphs (A)- (C) of this paragraph are in effect.

(50) Wholesale water or sewer service - Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§291.15. Notice of Wholesale Water Supply Contract.

(a) Notification. A district or authority created under Texas Constitution, §52, Article III, or §59, Article XVI, a retail public utility, a wholesale water service, or other person providing a retail public utility with a wholesale water supply shall provide the commission with a certified copy of any wholesale water supply contract with a retail public utility within 30 days after the date of the execution of the contract.

(b) Information. The submission must include the amount of water being supplied, term of the contract, consideration being given for the water, purpose of use, location of use, source of supply, point of delivery, limitations on the reuse of water, and any other condition or agreement relating to the contract. The certified copy of the contract should be submitted to the Water Utilities Division of the commission.

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

Filed with the Office of the Secretary of State, on October 5, 1998.

TRD-9815521

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 239-4640

◆ ◆ ◆
30 TAC §291.15, §291.16

(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 Natural Resource Conservation or in the Texas Register

office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Texas Water Code, §5.103, which provides the Texas Natural Resource Conservation Commission with the authority to adopt any rules necessary to carry out its powers and duties under the Texas Water Code and other laws of the State of Texas, and under Texas Water Code, §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.15 implements Texas Water Code §13.143.

There are no other statutes, codes or rules that will be affected by this rule.

§291.15. *Jurisdiction of Municipality: Surrender of Jurisdiction.*

§291.16. *Applicability of Commission Service Rules Within the Corporate Limits of a Municipality.*

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 October 5, 1998.

TRD-9815522

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 239-4640



Subchapter B. Rates, Ratemaking and Rate/Tariff Changes

30 TAC §§291.21, 291.25, 291.29, 291.31, 291.32, 291.34

The new and amendments are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.31 implements Texas Water Code §13.183. Section 291.34 implements Texas Water Code §13.183 and §13.184.

There are no other statutes, codes or rules that will be affected by this rule.

§291.21. *Form and Filing of Tariffs.*

(a) Approved tariff. No utility shall directly or indirectly demand, charge, or collect any rate or charge, or impose any classifications, practices, rules, or regulations different from those prescribed in its approved tariff filed with the commission or with the municipality exercising original jurisdiction over the utility, except as noted in this subsection. A utility may charge the rates proposed under the Texas Water Code, §13.187(a) (relating to Statement of Intent to Change Rates) [~~(concerning to notice of intent)~~] after the proposed effective date, unless the rates are suspended or the commission or a judge sets interim rates. The regulatory assessment required in Texas Water Code §5.235(n) [~~of the code~~] does not have to be listed on the utility's approved tariff to be charged and collected but shall be included in the tariff at the earliest opportunity. A person who possesses facilities used to provide water utility service or a utility that holds a certificate of public convenience and necessity to provide water service which enters into an agreement pursuant to Texas Water

Code §13.250(b)(2) [~~of the code~~], may collect charges for wastewater services on behalf of another retail public utility on the same bill with its water charges and shall at the earliest opportunity include a notation on its tariff that it has entered into such an agreement.

(b) Requirements as to size, form, identification, minor changes and filing of tariffs.

(1) (No change.)

(2) Minor Tariff Changes. Except for an affected county, a public utility's approved tariff may not be changed or amended without commission approval. An affected county can change rates for water or wastewater service without commission approval but must file a copy of the revised tariff with the commission within 30 days after the effective date of the rate change. [~~The executive director may approve the following minor changes to tariffs:~~]

(A) The executive director may approve the following minor changes to tariffs:

(i) [~~(A)~~] service rules and policies;

(ii) [~~(B)~~] changes in fees for customer deposits, meter tests, return check charges, and late charges, provided they do not exceed the maximum allowed by the applicable sections;

(iii) [~~(C)~~] implementation of a purchased water or sewage treatment provision, a temporary water rate provision in response to mandatory reductions in water use imposed by a court, government agency, or other authority, or water use fee provision previously approved by the commission;

(iv) [~~(D)~~] surcharges over a time period determined by the executive director to reflect the change in the actual cost to the utility for sampling costs, commission inspection fees, or at the discretion of the executive director, other governmental requirements beyond the utility's control;

(v) [~~(E)~~] addition of the regulatory assessment as a separate item or to be included in the currently authorized rate; [~~or~~]

(vi) [~~(F)~~] addition of a provision allowing a utility to collect wastewater charges pursuant to an agreement under the Texas Water Code, §13.250(b)(2), or [~~is~~]

(vii) rate adjustments to implement authorized phased or multi-step rates or downward rate adjustments to reconcile rates with actual costs.

(B) [~~(G)~~] The addition of an extension policy to a tariff or a change to an existing extension policy does not qualify as a minor tariff change because it must be approved or amended in a rate change application.

(3) Tariff Revisions and Tariffs Filed With Rate Changes. The utility shall file three copies of each revision or in the case of a rate change, the number required in the application form. Each revision shall be accompanied by a cover page which contains a list of pages being revised, a statement describing each change, its effect if it is a change in an existing rate, and a statement as to impact on rates of the change by customer class, if any. If a proposed tariff revision constitutes an increase in existing rates of a particular customer class or classes, then the commission may require that notice be given.

(4) Each rate schedule must clearly state the territory, subdivision, city, or county wherein said schedule is applicable.

(5) Tariff sheets are to be numbered consecutively. Each sheet shall show an effective date, a revision number, section number, sheet number, name of the utility, the name of the tariff, and title of

the section in a consistent manner. Sheets issued under new numbers are to be designated as original sheets. Sheets being revised should show the number of the revision, and the sheet numbers shall be the same.

(c) Composition of tariffs. A utility's tariff, including those utilities operating within the corporate limits of a municipality, shall contain sections setting forth:

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

(6) the extension policy; ~~and~~

(7) An approved water rationing plan; and

(8) The form of payment to be accepted for utility services.

(d)-(l) (No change.)

§291.25. Rate Change Applications, Testimony and Exhibits.

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

(c) An original ~~and four copies~~ of the completed rate filing package and the number of copies specified in the application form shall be submitted and filed with the commission. In the event that the proposed rate change becomes the subject of a hearing, the commission may require or allow, in addition to copies of the rate filing package, prefiled testimony and exhibits in support of the rate change request.

(d) (No change.)

(e) All intervenors or protestants shall file the specified number of copies of their prepared testimony, if required, and exhibits within the time period specified by the judge ~~[hearings examiner]~~ assigned to the application.

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

§291.29. Interim Rates.

(a) The commission or judge may on a motion by the executive director or by the appellant under the Texas Water Code, §13.043 (a), (b) or (f), as amended, establish interim rates to remain in effect until a final decision is made.

(b) At any time after the filing of a statement of intent to change rates under the Texas Water Code, §13.187, as amended, the executive director may petition the commission or judge to set interim rates to remain in effect until further commission action or a final rate determination is made. After a hearing is convened, any party may petition the judge or commission to set interim rates.

(c) Interim rates may be established by the commission or judge in those cases under the commission's original or appellate jurisdiction where the proposed increase in rates could result in an unreasonable economic hardship on the utility's customers, unjust or unreasonable rates, or failure to set interim rates could result in an unreasonable economic hardship on the utility.

(d) In making a determination under subsection (c) of this section: ~~[the commission may limit its consideration of the matter to oral arguments of the affected parties and may:]~~

(1) The commission or judge may limit its consideration of the matter to oral arguments of the affected parties and may:

(A) ~~[(1)]~~ Set interim rates not lower than the authorized rates prior to the proposed increase nor higher than the requested rates;

(B) ~~[(2)]~~ Deny interim rate relief;

(C) ~~[(3)]~~ Require that all or part of the requested rate increase be deposited in an escrow account in accordance with rules set forth in §291.30 of this title (relating to Escrow of Proceeds Received Under Rate Increase); or

(2) ~~[(4)]~~ The commission may remand the request for interim rates to the SOAH ~~[Office of Hearings Examiners]~~ for an evidentiary hearing on interim rates. ~~[If so authorized by the commission's remand order,] The [the] presiding judge will [hearings examiner may] issue a non-appealable interlocutory ruling setting interim rates to remain in effect until a final rate determination is made by the commission.~~

(e) The establishment of interim rates does not preclude the commission from establishing, as a final rate, a different rate from the interim rate.

(f) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall refund or credit against future bills all sums collected in excess of the rate finally ordered plus interest as determined by the commission.

(g) Unless otherwise agreed to by the parties to the rate proceeding, the retail public utility shall be authorized by the commission to collect the difference, in a reasonable number of monthly installments, from its customers for the amounts by which the rate finally ordered exceeds the interim rates.

(h) The retail public utility must provide a notice to its customers including the interim rates set by the commission or judge with the first billing at the interim rates with the following wording: "The Texas Natural Resource Conservation Commission (or judge) has established the following interim rates to be in effect until the final decision on the requested rate change (appeal) or until another interim rate is established".

(i) If the commission or judge establishes interim rates or an escrow account in a proceeding under Texas Water Code §13.187, the commission must make a final determination on the rates within 335 days after the effective date of the interim rates or escrowed rates or the rates are automatically approved as requested by the utility in its application.

~~[(j) This subsection applies to a rate application proceeding under §291.22(h) (concerning Notice of Intent to Change Rates) if the application concerns only a proposed adoption or change in an extension policy. It also applies to a rate complaint proceeding concerning a utility's extension policy under Texas Water Code, §13.186 or §13.041. In such cases if the case has been referred to the State Office of Administrative Hearings, the assigned judge may in accordance with the requirements of this section order interim rates concerning the utility's extension policy.]~~

§291.31. Cost of Service.

(a) (No change.)

(b) Allowable expenses. Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable expenses. In computing a utility's allowable expenses, only the utility's historical test year expenses as adjusted for known and measurable changes will be considered.

(1) Components of allowable expenses. Allowable expenses, to the extent they are reasonable and necessary, and subject to this section, may include, but are not limited to, the following general categories:

(A) Operations and maintenance expense incurred in furnishing normal utility service and in maintaining utility plant used

by and useful to the utility in providing such service (payments to affiliated interests for costs of service, or any property, right, or thing, or for interest expense shall not be allowed as an expense for cost of service except as provided in the Texas Water Code, §13.185 [§13.185](e));

(B)-(F) (No change.)

(2) (No change.)

(c) Return on invested capital. The return on invested capital is the rate of return times invested capital.

(1) (No change.)

(2) Invested capital[~~;~~], also referred to as rate base. The rate of return is applied to the rate base. [~~The rate base, sometimes referred to as invested capital, includes the original cost of plant, property, and equipment, less accumulated depreciation, used and useful in rendering service to the public.~~] Components to be included in determining the [overall] rate base are as follows:

(A) Original cost, less accumulated depreciation, of utility plant, property and equipment used by and useful to the utility in providing service:

(i)-(iv) (No change.)

(B) (No change.)

(3) Items Not Included in Rate Base. Unless otherwise determined by the commission, for good cause shown, the following items will not be included in determining the overall rate base.

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

(C) Capital Improvements. The following capital improvements may not be considered invested capital of the utility for any purpose:

(i) Capital improvements that have been funded by the Water Utility Improvement Account (see §291.144(b) of this title (relating to Fines and Penalties), Water Utility Improvement Account) for the water or sewer system of a utility that has paid fines or penalties under Health and Safety Code, Chapter 341, Subchapter C, or under Texas Water Code Chapter 13; or

(ii) Capital improvements which have been funded from the Water Utility Improvement Account (see §291.144(b) of this title, Water Utility Improvement Account). for a utility placed in receivership or under a temporary manager under Texas Water Code §13.4132.

(d) Recovery of positive acquisition adjustments.

(1) For utility plant, property and equipment acquired by a utility from another retail public utility as part of a sale and transfer of utility service area after the effective date of these rules, at a cost which exceeds the original cost of plant, property and equipment which is used and useful in rendering service to the public, less accumulated depreciation, a positive acquisition adjustment may be allowed to the extent that the acquiring utility proves that:

(A) At the time of the acquisition, the property is used and useful in providing water or sewer service;

(B) Reasonable, prudent, and timely investments will be made if required to bring the system into compliance with all applicable rules and regulations;

(C) As a result of the sale or transfer:

(i) the customers of the system being acquired will receive higher quality or more reliable water or sewer service or that the acquisition was necessary so that customers of the utility's other systems could receive higher quality or more reliable water or sewer service.

(ii) regionalization of retail public utilities (meaning a pooling of financial, managerial or technical resources which achieve economies of scale or efficiencies of service) was achieved; or

(iii) the system being acquired is able to maintain a financially stable and technically sound utility.

(D) The negotiations which led to the acquisitions were conducted at arm's length;

(E) The actual purchase price is reasonable in consideration of the condition of the plant, property and equipment being acquired; the impact on customer rates if the acquisition adjustment is granted; the benefits to the customers; and, the amount of contributions in aid of construction in the system being acquired;

(F) In a single or multi-stage sale, the owner of the acquired retail public utility and the final acquiring utility are not affiliated. A multi-stage sale is a sale where two or more transfers of assets and/or stock occur concurrently in what is essentially a single sales transaction.

(G) The rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition.

(2) The amount of the acquisition adjustment approved by the regulatory authority, shall be amortized using a straight line method over a period of at least ten years but not longer than the average remaining useful life of the acquired plant, property and equipment, at an interest rate equal to the rate of return determined under subsection (c) of this section. The acquisition adjustment may be treated as a surcharge and may be recovered using non-system-wide rates.

(3) The authorization for and the amount of an acquisition adjustment can only be determined as a part of a rate change application.

(4) The acquisition adjustment can only be included in rates as a part of a rate change application.

§291.32. Rate Design.

(a) General. In fixing the rates of a utility, the commission shall fix its overall revenues at a level which will permit such utility a reasonable opportunity to earn a reasonable return on its invested capital used and useful in rendering service to the public, over and above its reasonable and necessary operating expenses (unless an alternative rate method is used as set forth in §291.34 of this title, (relating to Alternative Rate Methods) , and preserve the financial integrity of the utility.

(b) Conservation. [~~In order to promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.~~]

(1) In order to encourage the prudent use of water or promote conservation, water and sewer utilities shall not apply rate structures which offer discounts or encourage increased usage by residential customers.

(2) After receiving final authorization from the regulatory authority through a rate change proceeding, a utility may implement

a water conservation surcharge using an inclining block rate or other conservation rate structure. A utility may not implement such a rate structure to avoid providing facilities necessary to meet the commission's minimum standards for public drinking water systems. A water conservation rate structure may generate revenues over and above the utility's usual cost of service:

(A) To reduce water usage or promote conservation either on a continuing basis or in specified restricted use periods identified in the utility's tariff in order to:

(i) Comply with mandatory reductions directed by a wholesale supplier or underground water district; or,

(ii) Maintain acceptable pressure or storage during drought periods, or other water rationing conditions authorized by an approved water rationing plan.

(B) To generate additional revenues necessary to provide facilities for maintaining or increasing water supply, treatment, production or distribution capacity.

(3) All additional revenues over and above the utility's usual cost of service collected under paragraph (2) of this subsection:

(A) Must be accounted for separately and reported to the executive director, as requested;

(B) Are considered customer contributed capital unless otherwise specified in a commission order; and

(C) May only be used in a manner approved by the executive director for applications not subject to hearing under Texas Water Code §13.187(b).

(c) Volume Charges. Charges for additional usage above the base rate shall be based on metered usage over and above any volume included in the base rate rounded up or down as appropriate to the nearest 1,000 gallons or 100 cubic feet, or the fractional portion of the usage.

(d) Surcharges. [for capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service]

(1) Capital improvements. In a rate proceeding, the commission may authorize collection of additional revenues from the customers to provide funds for capital improvements necessary to provide facilities capable of providing adequate and continuous utility service, and for the preparation of design and planning documents.

(2) Debt repayments. In a rate proceeding, the commission may authorize collection of additional revenues from customers to provide funds for debt repayments and associated costs, including funds necessary to establish contingency funds and reserve funds. Surcharge funds may be collected to meet all of the requirements of the Texas Water Development Board in regard to financial assistance from the Safe Drinking Water Revolving Fund.

§291.34. Alternative Rate Methods.

(a) To ensure that retail customers receive a higher quality or more reliable water or sewer service, to encourage regionalization, or to maintain financially stable and technically sound utilities, the commission may utilize alternate methods of establishing rates. The executive director may prescribe modified rate filing packages for these alternate methods of establishing rates.

(b) Single issue rate change. Unless a utility is using the cash needs method, it may request approval to increase rates to reflect a

change in any one specific cost component. The following conditions shall apply to this type of request:

(1) The proposed effective date of the single issue rate change request must be within 24 months of the effective date of the last rate change request in which a complete rate change application was filed;

(2) The change in rates is limited to those amounts necessary to recover the increase in the specific cost component and the increase will be allocated to the rate structure in the same manner as in the previous rate change;

(3) The scope of a single issue rate proceeding is limited to the single issue prompting a change in rates;

(4) The utility shall provide notice as described in §291.22(a) - (e) of this title, (relating to Notice of Intent to Change Rates), and the notice shall describe the cost component and reason for the increased cost; and

(5) A utility exercising this option is required to submit a complete rate change application within three years following the effective date of the single issue rate change request.

(c) Phased and Multi-Step Rate Changes. In a rate proceeding, the commission may authorize a phased, stepped, or multi-year approach to setting and implementing rates to eliminate the requirement that a utility file another rate application.

(1) A utility may elect to use the phased or multi-step rate method in order:

(A) To include the capital cost of installation of utility plant items that are necessary to improve service or achieve compliance with commission regulations in the utility's rate base and operating expenses in the revenue requirement when facilities are placed in service;

(B) To provide additional construction funds after major milestones are met;

(C) To provide assurance to a lender that rates will be immediately increased when facilities are placed in service;

(D) To allow a utility to move to metered rates from unmetered rates as soon as meters can be installed at all service connections;

(E) To phase in increased rates when a utility has been acquired by another utility with higher rates;

(F) To phase in rates when a utility with multiple rate schedules is making the transition to a system-wide rate structure; or

(G) When requested by the utility.

(2) Construction schedules and cost estimates for new facilities which are the basis for the phased or multi-step rate increase must be prepared by a licensed professional engineer.

(3) Unless otherwise specified in the commission order, the next phase or step cannot be implemented without verification of completion of each step by a licensed professional engineer, agency inspector, or agency subcontractor.

(4) At the time each rate step is implemented, the utility must review actual costs of construction versus the estimates upon which the phase-in rates were based. If the revenues received from the phased or multi-step rates are higher than what the actual costs indicate, the excess amount must be reported to the executive director prior to implementing the next phase or step. Unless otherwise

specified in a commission order or directed by the executive director, the utility may:

(A) Refund or credit the overage to the customers in a lump sum; or

(B) Retain the excess to cover shortages on later phases of the project. Any revenues retained but not needed for later phases must be proportioned and refunded to the customers at the end of the project with interest paid at the rate on deposits.

(5) The original notice to customers must include the proposed phased or multi-step rate change and informational notice must be provided to customers and the executive director 30 days prior to the implementation of each step.

(6) A utility that requests and receives a phased or multi step rate increase cannot apply for another rate increase during the period of the phase-in rate intervals unless:

(A) The utility can prove financial hardship; or

(B) The utility is willing to void the next steps of the phase-in rate structure and undergo a full cost of service analysis.

(d) Cash Needs Method. The cash needs method of establishing rates allows a utility to recover reasonable and prudently incurred debt service, a reasonable cash reserve account, and other expenses not allowed under standard methods of establishing rates.

(1) A utility may elect to use the cash needs method of setting rates if:

(A) The utility is a nonprofit corporation controlled by individuals who are customers and who represent a majority of the customers; or,

(B) The utility can demonstrate that use of the cash needs basis:

(i) Is necessary to preserve the financial integrity of the utility;

(ii) Will enable it to develop the necessary financial, managerial, and technical capacity of the utility; and,

(iii) Will result in higher quality and more reliable utility service for customers.

(2) Under the cash needs method, the allowable components of cost of service are: allowable operating and maintenance expenses; depreciation expense; reasonable and prudently incurred debt service costs; recurring capital improvements, replacements and extensions which are not debt-financed; and a reasonable cash reserve account.

(A) Allowable operating and maintenance expenses: Only those expenses which are reasonable and necessary to provide service to the ratepayers shall be included in allowable operations and maintenance expenses and shall be based on the utility's historical test year expenses as adjusted for known and measurable changes and reasonably anticipated, prudent projected expenses.

(B) Depreciation Expense: Depreciation expense may be included on any used and useful depreciable plant, property, or equipment which was paid for by the utility and which has a positive net book value on the effective date of the rate change.

(C) Debt service costs. Cash outlays to an unaffiliated interest necessary to repay principal and interest on reasonably and prudently incurred loans. If required by the lender, debt service costs may also include amounts placed in a debt service reserve account in

escrow or as required by the commission, Texas Water Development Board or other state or federal agency or other financial institution. Hypothetical debt service costs may be used for:

(i) Self-financed major capital asset purchases where the useful life of the asset is 10 years or more. Hypothetical debt service costs may include the debt repayments using an amortization schedule with the same term as the estimated service life of the asset using the prime interest rate at the time the application is filed.

(ii) Prospective loans to be executed after the new rates are effective. Any pre- commitments, amortization schedules or other documentation from the financial institution pertaining to the prospective loan must be presented for consideration.

(D) Recurring capital improvements, replacements and extensions which are not debt- financed. Capital assets, repairs or extensions which are a part of the normal business of the utility may be included as allowable expenses. This does not include routine capital expenses which are specifically debt- financed.

(E) Cash reserve account: A reasonable cash reserve account, up to 10% of annual operation and maintenance expenses, shall be maintained and revenues to fund it may be included as an allowable expense. Funds from this account may be used to pay expenses incurred before revenues from rates are received and for extraordinary repair and maintenance expenses and other capital needs or unanticipated expenses if approved in writing by the executive director. The utility shall account for these funds separately and report to the commission as required by the executive director. Unless the utility requests an exception in writing and the exception is explicitly allowed by the executive director in writing, any funds in excess of 10%, shall be refunded to the customers each year with the January billing either as a credit on the bill or refund. Each customer shall receive the same refund amount. These reserves are not for the personal use of the management or ownership of the utility and may not be used to compensate an owner, manager, or individual employee above the amount approved for that position in the most recent rate change request unless authorized in writing by the executive director.

(3) If the revenues collected exceed the actual cost of service, defined in subsection (d)(2) of this section, during any calendar year, these excess cash revenues must be placed in the cash reserve account described in subsection (d)(2)(D) of this section and become subject to the same restrictions.

(4) If the utility demonstrates to the executive director that it has reduced expenses through its efforts, the executive director may allow the utility to retain 50% of the savings which result rather than pass on the full amount of the savings through lower rates or refund all of the amounts saved to the customers.

(5) If a utility elects to use the cash needs method, it may not elect to use the utility method for any rate change application initiated within five years after beginning to use the cash needs method. If after the five-year period, the utility does elect to use the utility method, it may not include in rate base, or recover the depreciation expense, for the portion of any capital assets paid for by customers as a result of including debt service costs in rates. It may, however, include in rate base, and recover through rates, the depreciation expense for capital assets which were not paid for by customers as a result of including debt service costs in rates. The net book value of these assets may be recovered over the remaining useful life of the asset.

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Subchapter C. Ratemaking Appeals

30 TAC §291.41

The amendments are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other codes, statutes or rules that will be affected by this proposal.

§291.41. *Appeal of Ratemaking Pursuant to the Texas Water Code, §13.043.*

(a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission. This subsection does not apply to a municipally-owned utility, but does include privately-owned utilities operating within the corporate limits of a municipality. An appeal under this subsection may be initiated by filing with the commission a petition signed by a responsible official of the party to the rate proceeding or its authorized representative and accompanied by the filing fee as required by the Texas Water Code, §5.235 and by serving a copy of the petition on all parties to the original proceeding. The appeal must be initiated within 90 days after the date of notice of the final decision of the governing body.

(b) An appeal under the Texas Water Code, §13.043(b) must be initiated within 90 days after the effective date [day] of the rate change or, if appealing under §13.043(b)(2) or (5), within 90 days after the date on which the governing body of the municipality or affected county makes a final decision. An appeal is initiated by filing an original and four copies of a petition for review with the commission and by filing a copy of the petition with the entity providing service and with the governing body whose decision is being appealed if it is not the entity providing service. The petition must be signed by the lesser of 10,000 or 10% of the ratepayers whose rates have been changed and who are eligible to appeal under subsection (c) of this section.

(c) Retail ratepayers of the following entities may appeal the decision of the governing body of the entity affecting their water or sewer utility rates to the commission:

(1) A nonprofit water supply or sewer service corporation created and operating under Texas Water Code, Chapter 67 [Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933 (Article 1434a, Vernon's Texas Civil Statutes)];

(2)-(5) (No change.)

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

(g) An applicant requesting service from an affected county or a water supply or sewer service corporation may appeal to the commission a decision of the county or water supply or sewer service corporation affecting the amount to be paid to obtain service other than the regular membership or tap fees. An appeal under Texas Water Code, §13.043(g) must be initiated within 90 days after written notice of the amount to be paid to obtain service is provided to the service applicant or member of the decision of an affected county or water supply or sewer service corporation affecting the amount to be paid to obtain service as requested in the applicant's initial request for that service. The appeal must be accompanied by a \$100 filing fee as required by the Texas Water Code, §5.235.

~~[(1) The executive director may, if requested by the applicant, establish an interim charge for connecting service. If the applicant pays the charges determined by the executive director, the corporation or affected county shall provide service to the applicant pending final disposition of the appeal.]~~

(1) ~~[(2)]~~ If the commission finds the amount charged to be clearly unreasonable, it shall establish the fee to be paid and shall establish conditions for the applicant to pay any amounts due to the affected county or water supply or sewer service corporation. Unless otherwise ordered, any portion of the charges paid by the applicant which exceed the amount determined in the commission's order shall be repaid to the applicant with interest at a rate determined by the commission within 30 days of the signing of the order.

(2) ~~[(3)]~~ In an appeal brought under this subsection, the commission shall affirm the decision of the water supply or sewer service corporation if the amount paid by the applicant or demanded by the water supply or sewer service corporation is consistent with the tariff of the water supply or sewer service corporation and is reasonably related to the cost of installing on-site and off-site facilities to provide service to that applicant, in addition to the factors specified under subsection (i) of this section.

(3) ~~[(4)]~~ A determination made by the commission on an appeal from an applicant for service from a water supply or sewer service corporation under this subsection is binding on all similarly situated applicants for service, and the commission may not consider other appeals on the same issue until the applicable provisions of the tariff of the water supply or sewer service corporation are amended.

(h) The commission may, on a motion by the executive director or by the appellant under subsection (a), (b), or (f) of this section, establish interim rates to be in effect until a final decision is made.

(i) In an appeal under this section, the commission shall ensure that every rate made, demanded, or received by any retail public utility or by any two or more retail public utilities jointly shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory but shall be sufficient, equitable, and consistent in application to each class of customers. The commission shall use a methodology that preserves the financial integrity of the retail public utility.

(j) In an appeal under this section, the retail public utility shall provide written notice of hearing to all customers in a form prescribed by the executive director.

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

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Subchapter D. Records and Reports 30 TAC §291.76

The amendment is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other codes, statutes or rules that will be affected by this rule.

§291.76. *Regulatory Assessment.*

(a)-(h) (No change.)

(i) The full amount payable for the 12 calendar months of each year must [may] be remitted to the commission [on a quarterly basis or on an annual basis. If payments are made on a quarterly basis and submitted to the commission not later than January 30th, April 30th, July 30th, and October 30th, the utility service provider may retain 10% of the total amount collected to cover administrative costs incurred in collecting and remitting the assessment. If payments are remitted annually, the full amount collected is due] by January 30th of the following year.

(j) The utility service provider shall pursue collection of the assessment from the customer in the same manner and with the same diligence that it pursues collection of other service charges.

(k) If assessments collected in the 12 months prior to January 1 of each year [remitted on an annual basis] are not received by the commission by January 30th of that year [following the year in which they are collected], the utility service provider shall be assessed penalties and interest in accordance with Chapter 12 of this title (relating to Payment of Fees).

(l)-(n) (No change.)

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

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Subchapter E. Customer Service and Protection 30 TAC §291.87

The amendment is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and

enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.87 implements Texas Water Code §13.143.

There are no other rules, codes, or statutes that will be affected by this proposal.

§291.87. *Billing.*

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

(c) Penalty on delinquent bills for retail service. Unless otherwise provided, a one-time penalty of either \$3.00 [~~\$2.00~~] or 5.0% may be made on delinquent bills. If, after receiving a bill including a late fee, a customer pays the bill in full except for the late fee, the bill may be considered delinquent and subject to termination after proper notice under §291.88 of this title (relating to Discontinuance of Service). An additional late fee may not be applied to a subsequent bill for failure to pay the prior late fee. The penalty on delinquent bills may not be applied to any balance to which the penalty was applied in a previous billing. No such penalty may be charged unless a record of the date the utility mails the bills is made at the time of the mailing and maintained at the principal office of the utility. Late fees may not be charged on any payment received by 5:00 p.m. on the due date at the utility's office or authorized payment agency. The commission may prohibit a utility from collecting late fees for a specified period if it determines that the utility has charged late fees on payments which were not delinquent.

(d)-(p) (No change.)

(q) Voluntary contributions for certain emergency services.

(1) A utility may implement as part of its billing process a program under which the utility collects from its customers a voluntary contribution including a voluntary membership or subscription fee, on behalf of a volunteer fire department or an emergency medical service. A utility that collects contributions under this section shall provide each customer at the time the customer first becomes a customer, and at least annually thereafter, a written statement:

(A) Describing the procedure by which the customer may make a contribution with the customer's bill payment;

(B) Designating the volunteer fire department or emergency medical service to which the utility will deliver the contribution;

(C) Informing the customer that a contribution is voluntary;

(D) If applicable, informing the customer the utility intends to keep a portion of the contributions to cover related expenses; and

(E) Describing the deductibility status of the contribution under federal income tax law.

(2) A billing by the utility that includes a voluntary contribution under this section must clearly state that the contribution is voluntary and that it may be deducted from the billed amount.

(3) The utility shall promptly deliver contributions that it collects under this section to the designated volunteer fire department or emergency medical service, except that the utility may keep from the contributions an amount equal to the lesser of:

(A) The utility's expenses in administering the contribution program; or

(B) Five percent of the amount collected as contributions.

(4) Amounts collected under this section are not rates and are not subject to regulatory assessments, late payment penalties, or other utility related fees, are not required to be shown in tariffs filed with the regulatory authority, and non-payment may not be the basis for termination of service

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

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Subchapter F. Quality of Service

30 TAC §291.93

The amendment is proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other rules, statutes or codes that will be affected by this proposal.

§291.93. *Adequacy of Water Utility Service.*

[(a)] Sufficiency of service. Each retail public utility which provides water service shall plan, furnish, operate, and maintain production, treatment, storage, transmission, and distribution facilities of sufficient size and capacity to provide a continuous and adequate supply of water for all reasonable consumer uses.

(1) The water system quantity and quality requirements of the commission shall be the minimum standards for determining the sufficiency of production, treatment, storage, transmission, and distribution facilities of water suppliers and the safety of the water supplied for household usage. Additional capacity shall be provided to meet the reasonable local demand characteristics of the service area, including reasonable quantities of water for outside usage and livestock.

(2) In cases of extreme drought, periods of abnormally high usage, or extended reduction in ability to supply water due to equipment failure, or to comply with a state agency or court order on conservation temporary restrictions may be instituted to limit water usage. For utilities, these temporary restrictions must be in accordance with an approved water rationing plan. Unless specifically authorized by the executive director, retail public utilities may not use water rationing in lieu of providing facilities which meet the minimum capacity requirements of the commission's rules in 30 Texas Administrative Code, Chapter 290 of this title, (relating to Rules and Regulations for Public Water Systems), or reasonable local demand characteristics during normal use periods, or when the system is not making all immediate and necessary efforts to repair or replace malfunctioning equipment.

(A) An approved water rationing plan must be on file with the utility's approved tariff prior to implementing water rationing unless authorized by the executive director.

(B) Temporary restrictions must be in accordance with the utility's approved water rationing plan on file or specifically authorized by the executive director. The utility shall file a status report every 30 days that rationing continues or as required by the executive director. The executive director may suspend implementation of the restrictions at any time with written notice to the utility.

(C) The utility must provide written notice to each customer prior to implementing the provisions of the rationing plan. Mailed notice is acceptable and rationing may be enforced by the utility if notice is mailed 72 hours prior to the start of rationing. If notice is hand delivered, the utility cannot enforce the provisions of the plan for 24 hours after notice is provided unless authorized by the executive director. Notice shall be provided to the commission prior to implementing the program and may be by telephone if written notice is provided by mail within 10 days. Customer notice must contain:

- (i) The date rationing is to begin.
- (ii) The expected duration of the rationing program.
- (iii) The restrictions or stage of rationing being implemented and the specific restrictions which apply; and
- (iv) The penalties for violations of the rationing program.

(3) A retail public utility that possesses a certificate of public convenience and necessity that has reached 85% of its capacity as compared to the most restrictive criteria of the commission's minimum capacity requirements in Chapter 290 of this title (relating to Rules and Regulations for Public Water Systems) shall submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area. A report is not required if the source of supply available to the utility service provider is reduced to below the 85% level due to a court or agency conservation order unless that order is expected to extend for more than 18 months from the date it is entered in which case a report shall be required.

(A) This report is due no later than the 90 [~~120~~]th day after the retail public utility receives a copy of the commission field inspection report indicating that the system has reached 85 percent of its capacity. Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage or pumping.

~~[(i) Capacity is considered to be the overall rated capacity in number of residential connection equivalents based on the most restrictive criteria for production, treatment, storage or pumping.]~~

~~[(ii) For retail public utilities currently at or exceeding 85% of capacity, this report is due no later than the 180th day after the effective date of these rules.]~~

(B) The report should be submitted in writing and should contain the following:

- (i) A brief description of the overall utility system and service area.

(ii) An analysis of the plant capacity as defined in §291.93(a)(3)(A)(~~4~~).

(iii) Details on how the retail public utility will provide service to the remaining areas within the boundaries of its certificated area. This includes projections of cost and expected design and installation dates for additional facilities.

(C) The executive director may waive or limit the reporting requirements if the retail public utility demonstrates that the projected growth of the area will not require the retail public utility to exceed 100% of its current capacity for the next five years.

(D) Any retail public utility required to file reports under this section of the rules, including those requesting waivers, shall file updated reports within 90 days after the retail public utility receives a copy of each subsequent commission field inspection report [annually] until the system demand is below 85% capacity.

(E) Submission of this report shall not relieve the retail public utility from abiding by the requirements of other regulatory agencies as set forth in §291.92 of this title (relating to Requirements by Others).

[(b) Quality of product.]

(4) [~~4~~] Each retail public utility which possesses or is required to possess a certificate of convenience and necessity shall furnish safe water which meets the minimum quality criteria for drinking water prescribed by the commission. The supply must meet the requirements of Health and Safety Code §341.031 and commission rules. A utility or water supply corporation which is authorized to operate without a certificate of convenience and necessity pursuant to Health and Safety Code §13.242(c) of the code may be required by the executive director to meet the minimum criteria prescribed by the commission if so instructed in writing.

(5)[~~2~~] Each retail public utility must promptly take all reasonable actions necessary to protect the health of its customers at all times.

(6) [~~6~~] [~~Maintenance of Facilities.~~] Every retail public utility shall maintain its facilities to protect them from contamination, ensure efficient operation and promptly repair leaks.

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Subchapter G. Certificate of Convenience and Necessity

30 TAC §§291.101, 291.102, 291.103, 291.106, 291.107, 291.109, 291.111, 291.113, 291.114

The amendments are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and

duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.101 implements Texas Water Code §49.215(d). Section 291.102 implements Texas Water Code §13.241 and §13.246. Section 291.103 implements Texas Water Code §49.352. Section 291.109 implements Texas Water Code §13.301. Section 291.111 implements Texas Water Code §13.302. Section 291.113 implements Texas Water Code 13.254. Section 291.114 implements Texas Water Code §13.253.

There are no other codes, rules, or statutes that will be affected by this proposal.

§291.101. Certificate Required.

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

(c) A district may not provide services within an area for which a retail public utility holds a certificate of convenience and necessity or within the boundaries of another district without the district's consent, unless the district has a valid certificate of convenience and necessity to provide services to that area.

§291.102. Criteria for Considering and Granting Certificates or Amendments.

(a) The commission may approve [grant] applications and grant [issue] or amend a certificates only after finding that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service and may issue or amend the certificate as applied for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided. [~~In considering whether to grant or amend a certificate the commission shall consider:~~]

{~~(1) the adequacy of service currently provided to the requested area; }~~

{~~(2) the need for additional service in the requested area; }~~

{~~(3) the effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area; }~~

{~~(4) the ability of the applicant to provide adequate service; }~~

{~~(5) the feasibility of obtaining service from an adjacent retail public utility; }~~

{~~(6) the financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio; }~~

{~~(7) environmental integrity; and }~~

{~~(8) the probable improvement in service or lowering of cost to consumers in that area. }~~

(b) For water utility service, the commission shall ensure that the applicant is capable of providing drinking water that meets the requirements of Health and Safety Code Chapter 341 and commission rules and has access to an adequate supply of water.

(c) For sewer utility service, the commission shall ensure that the applicant is capable of meeting the commission's design criteria for sewer treatment plants, commission rules and the Texas Water Code.

(d) In considering whether to grant or amend a certificate, the commission shall also consider:

(1) The adequacy of service currently provided to the requested area;

(2) The need for additional service in the requested area;

(3) The effect of the granting of a certificate on the recipient of the certificate and on any retail public utility of the same kind already serving the proximate area;

(4) The ability of the applicant to provide adequate service;

(5) The feasibility of obtaining service from an adjacent retail public utility;

(6) The financial stability of the applicant, including, if applicable, the adequacy of the applicant's debt-equity ratio;

(7) Environmental integrity; and,

(8) The probable improvement in service or lowering of cost to consumers in that area.

(e) Where a new certificate of convenience and necessity is being issued for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) A list of all drinking water supply systems or sewer systems within a two mile radius of the proposed system;

(2) Copies of written requests seeking to obtain service from each of the drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring drinking water supply system or sewer system;

(3) Copies of written responses from each of the systems or evidence that they failed to respond;

(4) A description of the type of service that a neighboring drinking water supply system or sewer system is willing to provide and comparison with service the applicant is proposing;

(5) An analysis of all necessary costs for constructing, operating, and maintaining the new system for at least the first five years, including such items as taxes and insurance; and

(6) An analysis of all necessary costs for acquiring and continuing to receive service from the neighboring drinking water supply system or sewer system for at least the first 5 years.

(f) The commission may require an applicant utility to provide a bond or other financial assurance to ensure that continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §37.5011 of this title (relating to Financial Assurance for a Public Drinking Water Systems and Utilities).

(g) Where applicable, in addition to the other factors in this section the commission shall consider the efforts of the applicant to extend service to any economically distressed areas located within the service areas certificated to the applicant. For purposes of this subsection, "economically distressed area" has the meaning assigned in Texas Water Code §15.001.

§291.103. *Certificates Not Required.*

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

(d) Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) (No change.)

(2) Utilities or water supply corporations with less than 15 potential connections c urrently operating under a certificate of convenience and necessity may request revocation of the certificate at any time.

(3)-(8) (No change.)

(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under Texas Water Code, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by Texas Water Code, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by Texas Water Code, §13.255(b).

§291.106. *Notice for Applications for Certificates of Convenience and Necessity.*

(a) If an application for issuance or amendment of a certificate of public convenience and necessity is filed, the applicant will prepare a notice or notices, as prescribed in the commission's application form, which will include the following:

(1) All information outlined in the Administrative Procedure Act, Government Code Chapter 2001; [~~Texas, Article 6252-13a, §13;~~]

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

(b) After reviewing and, if necessary, modifying the proposed notice, the commission will send the notice to the applicant for publication and/or mailing.

(1) For applications for issuance of a certificate of public convenience and necessity, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within five miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(2) [(+) For applications for an amendment of a certificate of public convenience and necessity, the [The] applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service within two miles of the requested service area, and any city with an extra-territorial jurisdiction which overlaps the proposed service area.

(3) [(2)] Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.

(4) [(3)] Utilities that are required to possess a certificate but that are currently providing service without a certificate must provide individual mailed notice to all current customers. The notice

must contain the current rates, the effective date those rates were instituted and any other information required in the application.

(5) [(4)] Within 30 days of the date of the notice, the applicant shall submit to the commission an affidavit specifying the persons to whom notice was provided and the date of that notice.

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

§291.107. *Action on Applications.*

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

(c) The executive director may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn in accordance with Chapter 50 [263] of this title (relating to Action on Applications [Final Approval By executive director, Evaluation of Request for Contested Case Hearing]).

(d) If a hearing is requested, the application will be processed in accordance with Chapter 55 Subchapter B [263] of this title (relating to Hearing Requests, Public Comment [Action on Applications Final Approval By executive director, Evaluation of Request for Contested Case Hearing]).

§291.109. *Report of Sale, Merger, Etc; Investigation; Disallowance of Transaction. [~~or Consolidation.~~]*

(a) On or before the 120th day [At least 120 days] before the [proposed] effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission [notify the commission] and give public notice of the action [proposed transaction]. The notification shall be on the form required by the commission and the comment period will not be less than 30 days. Public notice may be waived by the executive director for good cause shown.

(b) A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing or acquiring the water or sewer system cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in §37.5011 of this title, (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(d) [(b)] The commission shall, with or without a public hearing, investigate the sale, acquisition, lease, rental, merger or consolidation to determine whether the transaction will serve the public interest.

(e) [(e)] Prior to the expiration of the 120-day notification period, the executive director shall notify all known parties to the transaction of the decision to either approve the sale administratively or to request that the commission hold a public hearing to determine if the transaction will serve the public interest. The executive director may request a hearing if:

(1) The application filed with [notification to] the commission or the public notice was improper;

(2) The person purchasing or acquiring the water or sewer system has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to

the service area being acquired and to any areas currently certificated to that person [is inexperienced as a utility service provider];

(3) The person or an affiliated interest of the person purchasing or acquiring the water or sewer system has a history of: [noncompliance with the requirements of the commission or the Texas Department of Health or of continuing mismanagement or misuse of revenues as a utility service provider.];

(A) Noncompliance with the requirements of the commission or the Texas Department of Health; or

(B) Continuing mismanagement or misuse of revenues as a utility service provider;

(4) The person purchasing or acquiring the water or sewer system cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the customers of the water or sewer system;

(5) It is in the public interest to investigate the following factors:

(A) Whether the seller has failed to comply with a commission order;

(B) The adequacy of service currently provided to the area;

(C) The need for additional service in the requested area;

(D) The effect of approving the transaction on the utility or water supply or sewer service corporation, the person purchasing or acquiring the water or sewer system, and on any retail public utility of the same kind already serving the proximate area;

(E) The ability of the person purchasing or acquiring the water or sewer system to provide adequate service;

(F) The feasibility of obtaining service from an adjacent retail public utility;

(G) The financial stability of the person purchasing or acquiring the water or sewer system, including, if applicable, the adequacy of the debt-equity ratio of the person purchasing or acquiring the water or sewer system if the transaction is approved;

(H) The environmental integrity; and,

(I) The probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(f) [(d)] Unless the executive director requests that a public hearing be held, the sale, acquisition, lease, or rental or merger or consolidation may be completed as proposed: [at the end of the 120-day period or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.]

(1) At the end of the 120-day period;

(2) Or may be completed at any time after the utility or water supply or sewer service corporation receives notice that a hearing will not be requested.

(g) [(e)] Within 30 days after the actual effective date of the transaction, the utility or water supply or sewer service corporation must file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has been made final and documentation that customer deposits have been transferred or refunded to the customer with interest as required by these rules.

(h) ~~[(f)]~~ If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as ~~provide the~~ required ~~notification~~ or to provide public notice, the sale, acquisition, lease, merger, consolidation or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.

(i) ~~[(g)]~~ A sale, acquisition, lease, or rental of any water or sewer system, required by law to possess a certificate of public convenience and necessity that is not completed in accordance with the provisions of the Texas Water Code, §13.301 is void.

(j) ~~[(h)]~~ The requirements of the Texas Water Code, §13.301 do not apply to: ~~[the purchase of replacement property, to a transaction under the Texas Water Code, §13.255 or to foreclosure on the physical assets of a utility.]~~

- (1) The purchase of replacement property;
- (2) A transaction under the Texas Water Code, §13.255;
- (3) Or to foreclosure on the physical assets of a utility.

(k) ~~[(i)]~~ If a utility facility or system is sold and the facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its certificate of convenience and necessity, or controlling interest in an incorporated utility, unless the utility provides to the purchaser or transferee before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate- making proceedings.

(l) ~~[(j)]~~ A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.

§291.111. *Purchase of Voting Stock in Another Utility.*

(a) A ~~At least 60 days before a~~ utility may not purchases voting stock in and ~~or~~ a person may not acquires a controlling interest in a utility doing business in this state~~;~~ unless the utility or person files a written application with ~~shall notify~~ the commission not later than the 61st day before the date on which the transaction is to occur ~~of the proposed purchase or acquisition.~~ A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person acquiring a controlling interest in a utility may be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require that the person provide a bond or other financial assurance to ensure continuous and adequate utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance must be as specified in §37.5011 of this title (relating to Financial Assurance for Public Drinking Water Systems and Utilities).

(d) ~~[(b)]~~ The executive director may request that the commission hold a public hearing on the transaction if the executive director believes that a criterion ~~criteria~~ prescribed by §291.110 ~~291.109~~ ~~(e)~~ of this title (relating to Foreclosure and Bankruptcy) applies.

(e) ~~[(e)]~~ Unless the executive director requests that a public hearing be held, the purchase or acquisition may be completed as proposed: ~~[at the end of the 60 day period or may be completed at any time after the executive director notifies the person or utility that a hearing will not be requested.]~~

(1) At the end of the 60 day period; or

(2) At any time after the executive director notifies the person or utility that a hearing will not be requested.

(f) ~~[(d)]~~ The utility or person must notify the commission within 30 days after the date that the transaction is completed.

(g) ~~[(e)]~~ If a hearing is requested by the executive director or if the person or utility fails to make the application to the commission as ~~provide the~~ required ~~notification to the commission 60 days prior to the transaction~~, the purchase or acquisition may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

§291.113. *Revocation or Amendment of Certificate.*

(a) A certificate or other order of the commission does not become a vested right and the commission at any time after notice and hearing may revoke or amend any certificate of public convenience and necessity if it finds that: ~~[the certificate holder has never provided; is no longer providing service or has failed to provide continuous and adequate service in the area; or part of the area covered by the certificate.]~~

(1) The certificate holder has never provided, is no longer providing service or has failed to provide continuous and adequate service in the area, or part of the area covered by the certificate;

(2) In an affected county, the cost of providing service by the certificate holder is so prohibitively expensive as to constitute denial of service, provided that, for commercial developments or for residential developments started after September 1, 1997, in an affected county, the fact that the cost of obtaining service from the currently certificated retail public utility makes the development economically unfeasible does not render such cost prohibitively expensive in the absence of other relevant factors;

(3) The certificate holder has agreed in writing to allow another retail public utility to provide service within its service area, except for an interim period, without amending its certificate; or

(4) The certificate holder has failed to file a cease and desist action pursuant to Water Code §13.252 within 180 days of the date that it became aware that another retail public utility was providing service within its service area, unless the certificate holder demonstrates good cause for its failure to file such action within the 180 days.

(b) Upon written request from the certificate holder, the executive director may cancel the certificate of a utility or water supply corporation authorized by rule to operate without a certificate of public convenience and necessity under Texas Water Code §13.242(c).

(c) ~~[(b)]~~ If the certificate of any retail public utility is revoked or amended, the commission may require one or more retail public utilities to provide service in the area in question. The order of the commission shall not be effective to transfer property.

(d) A retail public utility may not in any way render retail water or sewer service directly or indirectly to the public in an area that has been decertified under this section without providing compensation for any property that the commission determines is rendered useless or valueless to the decertified retail public utility as a result of the decertification.

(e) The determination of the monetary amount of compensation, if any, shall be determined at the time another retail public utility seeks to provide service in the previously decertified area and before service is actually provided.

(f) The monetary amount shall be determined by a qualified individual or firm serving as independent appraiser agreed upon by the decertified retail public utility and the retail public utility seeking to serve the area. The determination of compensation by the independent appraiser shall be binding on the commission. The costs of the independent appraiser shall be borne by the retail public utility seeking to serve the area.

(g) For the purpose of implementing this section, the value of real property shall be determined according to the standards set forth in Property Code, Chapter 21, governing actions in eminent domain and the value of personal property shall be determined according to the factors in this subsection. The factors ensuring that the compensation to a retail public utility for the taking, damaging, or loss of personal property, including the retail public utility's business, is just and adequate shall at a minimum include: the impact on the existing indebtedness of the retail public utility and its ability to repay that debt; the value of the service facilities of the retail public utility located within the area in question; the amount of any expenditures for planning, design, or construction of service facilities that are allocable to service to the area in question; the amount of the retail public utility's contractual obligations allocable to the area in question; any demonstrated impairment of service or increase of cost to consumers of the retail public utility remaining after the decertification; the impact on future revenues and expenses of the retail public utility; necessary and reasonable legal expenses and professional fees; factors relevant to maintaining the current financial integrity of the retail public utility; and other relevant factors.

(h) The commission shall determine whether payment of compensation shall be in a lump sum or paid out over a specified period of time. If there were no current customers in the area decertified and no immediate loss of revenues or if there are other valid reasons determined by the commission, installment payments as new customers are added in the decertified area may be an acceptable method of payment.

§291.114. Requirement to Provide Continuous and Adequate Service.

(a) Any retail public utility which possesses or is required by law to possess a certificate of convenience and necessity or a person who possesses facilities used to provide utility service must provide continuous and adequate service to every customer and every qualified applicant for service whose primary point of use is within the certificated area and may not discontinue, reduce or impair utility service except for:

(1) nonpayment of charges for services provided by the certificate holder or a person who possesses facilities used to provide utility service;

(2) nonpayment of charges for sewer service provided by another retail public utility under an agreement between the retail public utility and the certificate holder or a person who possesses facilities used to provide utility service or under a commission order;

(3) nonuse; or

(4) other similar reasons in the usual course of business without conforming to the conditions, restrictions, and limitations prescribed by the commission.

(b) After notice and hearing, the commission may:

(1) order any retail public utility that is required by law to possess a certificate of public convenience and necessity or any retail public utility that possesses a certificate of public convenience and necessity and is located in an affected county as defined in Texas Water Code §16.341, to:

(A) provide specified improvements in its service in a defined area if:

(i) service in that area is inadequate as set forth in Sections 291.93 and 291.94 of this chapter; or

(ii) is substantially inferior to service in a comparable area; and

(iii) it is reasonable to require the retail public utility to provide the improved service; or

(B) develop, implement, and follow financial, managerial, and technical practices that are acceptable to the commission to ensure that continuous and adequate service is provided to any areas currently certificated to the retail public utility if the retail public utility has not provided continuous and adequate service to any of those areas and, for a utility, to provide financial assurance of the utility's ability to operate the system in accordance with applicable laws and rules, in the form of a bond or other financial assurance in a form and amount specified by the commission;

(2) order two or more public utilities or water supply or sewer service corporations to establish specified facilities for interconnecting service;

(3) order a public utility or water supply or sewer service corporation that has not demonstrated that it can provide continuous and adequate service from its drinking water source or sewer treatment facility to obtain service sufficient to meet its obligation to provide continuous and adequate service on at least a wholesale basis from another consenting utility service provider; or

(4) issue an emergency order, with or without a hearing, under §291.14 of this title.

(c) If the commission has reason to believe that improvements and repairs to a water or sewer service system are necessary to enable a retail public utility to provide continuous and adequate service in any portion of its service area and the retail public utility has provided financial assurance under Health and Safety Code §341.0355., or under this chapter, the commission, after providing to the retail public utility notice and an opportunity to be heard by the commissioners at a commission meeting, may:

(1) immediately order specified improvements and repairs to the water or sewer system, the costs of which may be paid by the bond or other financial assurance in an amount determined by the commission not to exceed the amount of the bond or financial assurance the order requiring the improvements may be an emergency order if it is issued after the retail public utility has had an opportunity to be heard by the commissioners at a commission meeting; and

(2) require a retail public utility to obligate additional money to replace the financial assurance used for the improvements.

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

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Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter H. Utility Submetering

30 TAC §§291.121-291.127

The amendments are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

These sections are also proposed under Texas Water Code §13.503 and §13.5031 which require the commission to adopt rules and standards governing allocating utility service costs from a master meter. Section 291.125(c) implements Texas Water Code §13.504.

§291.121. General Rules.

(a) Purpose and scope.

(1) The provisions of this subchapter ~~[section]~~ are intended to establish a comprehensive regulatory system to assure that the practices involving, ~~submetered and [submetering]~~ nonsubmetered master metered ~~[utility services, and]~~ billing of dwelling units are just and reasonable to the tenant and the owner and to establish the rights and responsibilities of both the owner and tenant. The provisions of this subchapter ~~[section]~~ shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status.

(2) For purposes of enforcement, ~~[both utilities and]~~ owners are subject to enforcement pursuant to the Texas Water Code, which may involve civil penalties of up to \$5,000 for each offense and criminal penalties for willful and knowing violations.

(b) Application. The ~~provisions [provision]~~ of this subchapter ~~[section]~~ shall apply to existing apartment houses, ~~condominiums,~~ multiple use facilities or mobile home parks ~~[utilizing water], providing submetered or nonsubmetered, master metered utility service,~~ also known as allocated utility service, as of September 2, 1987; or which propose providing submetered or nonsubmetered, master metered utility service ~~[wastewater submetering or existing apartment houses engaged in nonsubmetered master metered service as of the effective date of this section as well as those apartment houses, multiple use facilities and mobile home parks which engage in utility submetering or apartment houses which engage in nonsubmetered master metered services as defined by this section]~~ at any subsequent date.

~~[(c) Severability clause. The adoption of this section will in no way preclude the Texas Natural Resource Conservation Commission from altering or amending it in whole or in part, or from requiring any other or additional service, equipment, facility, or standard, either~~

~~upon complaint or upon its own motion or upon application of any utility. If any provision of this section is held invalid, such invalidity shall not affect other provisions or application of this section which can be given effect without the invalid provision or application, and to this end, the provisions of this section are declared to be severable. The provisions of this section shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.]~~

§291.122. Definitions.

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

(1) Allocated utility service - See nonsubmetered, master metered (allocated) utility service.

(2) Apartment house - A building or buildings containing five or more dwelling units, all of which are rented primarily for nontransient use, with rental paid at intervals of one week or longer; ~~and a [Apartment house shall include]~~ residential condominiums, whether rented or owner occupied.

(3) Billing unit - ~~For submetered service, the billing unit shall be that used by the utility in its billing to the owner. [Gallon for water or wastewater service.]~~

~~[Commission - The Texas Natural Resource Conservation Commission.]~~

(4) Customer - The individual, firm, or corporation in whose name a master meter has been connected by the utility.

(5) Dwelling unit - A ~~room or rooms in an apartment house or condominium suitable for occupancy as a residence containing kitchen and bathroom facilities, or a~~ mobile home in a mobile home park; a room or rooms including kitchen and bathroom facilities suitable for occupancy as a residence in an apartment house or condominium; and a rental unit in a multiple use facility .

~~[Hearing - Any proceeding based on an application, petition, complaint, or motion.]~~

(6) Master meter - A meter used to measure, for billing purposes, all water usage of an apartment house or mobile home park, including common areas, common facilities, and dwelling units therein.

(7) Mobile home park - A property on which parking spaces are rented to mobile dwelling units primarily for nontransient use and for which rental is paid at intervals of one month or longer.

(8) Month or monthly - The period between any two consecutive meter readings by the utility, either actual or estimated, at approximately 30-day intervals.

(9) Multiple use facility - A commercial or industrial park, office complex or marina with five or more dwelling units which are occupied primarily for nontransient use and are rented at intervals of one month or longer.

(10) Nonsubmetered, master metered (allocated) utility service - Water utility service that is master metered for the apartment house, condominium or multiple use facility but not submetered, and wastewater utility service based on master metered water utility service.

(11) Owner - For purposes of this subchapter, any owner, operator, or manager of any apartment house, condominium , mobile home park or multiple use facility who bills tenants for

submetered or allocated ~~[engaged in]~~ water or wastewater utility service ~~[submetering]~~.

(12) Submetered utility service - Water utility service that is master metered for the owner by the utility and individually metered by the owner at each dwelling unit; and wastewater utility service based on submetered water utility service.

(13) Tenant - A person who is entitled to occupy a dwelling unit to the exclusion of others and, if the dwelling unit is rented, who is obligated to pay for the occupancy under a written or oral rental agreement.

(14) Utility metering - Individual ~~[apartment]~~ dwelling unit metering of water or wastewater utility service performed by a utility company.

(15) Utility service - For purposes of this subchapter, utility service shall include water and wastewater service only.

~~[Utility submetering - Individual dwelling unit metering of water or wastewater utility service performed by the owner.]~~

§291.123. Records and Reports.

(a) Either the owner or the owner's management company engaging or proposing to engage in utility submetering or billing for nonsubmetered master metered service must register with the commission ~~[30 days prior to commencing utility submetering]~~ and provide the following information

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

(4) Name and location of each ~~nonsubmetered apartment, condominium or multiple-use facility or of each submetered apartment, unit or~~ mobile home park, ~~condominium or multiple-use facility.~~ ~~[being submetered or nonsubmetered apartment unit.]~~

(b) The owner shall ~~[maintain and]~~ make the following records available for inspection by the tenant ~~[the following records]~~ during normal business hours:

(1) A current and complete copy of this subchapter;

~~(2)[(4)]~~ The billing from the utility to the owner for the current month and the 12 preceding months;

~~(2)~~ The calculation of the average cost per billing unit, i.e., gallons for the current month and the 12 preceding months. For nonsubmetered master metered service the average cost per billing unit shall be equal to the charges for the utility service plus applicable tax, less any penalties charged by the utility plus applicable tax, less any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges, divided by the total number of billing units;

(3) The calculation of the average cost per gallon or cubic foot for submetered billings or the percentage(s) used to calculate allocated billings for the current month and the 12 preceding months;

(4) ~~[(3)]~~ All submeter readings and tenant billings for the current month and the 12 preceding months; and

(5) ~~[(4)]~~ All submeter test results for the current month and the 12 preceding months, ~~;~~ and

~~[(5) Separate accounts for rental and utility billing, including date of transaction.]~~

(c) Records shall be made available at the resident manager's office during reasonable business hours or, if there is no resident manager, at the dwelling unit of the tenant at a time agreed upon by the owner and tenant.

(d) All records shall be made available to the commission upon request.

§291.124. Charges and Fees. [Calculation of Costs.]

(a) The charge for submetered or allocated [Nonsubmetered master metered] utility service [costs] shall be calculated, each month and may include: the total amount charged the owner by the utility for water and wastewater service, including any surcharges the utility assessed for those services; less charges for utility services provided to common areas [based on metered billing units during the same billing period as that of the utility]. [The nonsubmetered master metered billing units shall be multiplied by the average cost per billing calculated according to §291.125(d) of this title (relating to Billing):]

(b) If water used in common areas is not separately metered, the owner shall charge tenants for no more than 85% of the utility's total charges for water and wastewater service. Allocation of central systems for air conditioning, heating, wastewater and hot water are not prohibited by this section.

(c) ~~[(b)]~~ The bill for submetered or allocated utility service may not include [cost of nonsubmetered master metered utilities shall be the total charges for utility service to the apartment house less] any fees [penalties] charged by the utility [to the apartment owner] for disconnect, reconnect, late payment, stormwater, drainage, solid waste or other similar service charges.

(d) The owner shall not impose any other charge on the tenant for submetered or allocated utility service except as provided in §291.125(k) and (l) of this title (relating to Rental Agreement and Billing).

(e) Unless approved by the executive director, an owner who provides submetered utility service shall not change his or her billing method to provide allocated utility service.

§291.125. Rental Agreement and Billing.

(a) Rental agreement for submetered utility service [submetering]. The [All] rental agreements between the owner and the tenants shall clearly state that the dwelling unit is submetered, that the bills will be issued on that basis, that water consumption or wastewater charges based on water consumption for all common areas and common facilities will be the responsibility of the owner and not of the tenant, and that any disputes relating to the computation of the tenant's bill and the accuracy of the submetering device will be between the tenant and the owner. [Each owner shall provide the tenant, at the time of the lease is signed, a copy of this section or narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.]

(b) Rental agreement for allocated [nonsubmetered master metered] utility service. The [All] rental agreements between the [apartment] owner and [the] tenants shall clearly state the method used to allocate [provide a clear written description of the method of allocation of] nonsubmetered, master metered utilities, [for the apartment house. The method of allocation may be changed only after 90 days notice of such change to the tenants. The rental agreement for each apartment unit shall contain a statement of] the average monthly bill for the previous calendar year for the dwelling unit, and that any disputes relating to the computation of the tenant's bill will be between the tenant and the owner [for that apartment unit]. The method of allocation may be changed only after 90 days notice of such change to the tenants . [Each owner shall provide a tenant, at the time a lease is signed, a copy of this section or a narrative summary approved by the executive director to inform the tenant of his rights and the owner's responsibilities under this section.]

(c) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of submeters or the implementation of allocated billing, an owner increases rental rates and such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90 day period. [Rendering and form of submetered bill.]

~~{(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. Bills shall be rendered as promptly as possible following the reading of the submeters. The submeters shall be read within three days of the schedule reading date of the utility's master meter.}~~

~~{(2) The billing unit shall be that used by the utility in its billing to the owner such as thousand gallons or hundred cubic feet for water or wastewater submetering.}~~

~~{(3) The owner shall be responsible for determining that water consumption or sewer usage billed to any dwelling unit shall be only for that submetered and consumed within that unit.}~~

~~{(4) Submetered billings shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, submetered billing information must be separate and distinct from any other charges on the bill and conform to information required in paragraph (7) of this subsection. The submetered bill must clearly state "submetered water" or "submetered wastewater" as applicable.}~~

~~{(5) The bill shall reflect only submetered usage. Utility consumption for all common facilities will be the responsibility of the owner and not of the tenant. Allocation of central systems for air conditioning, heating, wastewater and hot water are not prohibited by these sections as set forth in paragraph (d) of this section concerning non-submetered master meter utilities.}~~

~~{(6) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the net total charges for water or sewer consumption, plus applicable tax, by the total number of billing units to obtain an average cost per billing unit. This average billing unit cost shall then be multiplied by each tenant's consumption to obtain the charge to the tenant. The average cost per billing unit shall not include any penalties charged by the utility to the owner for disconnect, reconnect, late payment, or other similar service charges.}~~

~~{(7) The tenant's water or wastewater submeter bill shall show all of the following information:}~~

~~{(A) The date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered.}~~

~~{(B) The number of billing units metered.}~~

~~{(C) The computed rate per billing unit.}~~

~~{(D) The total amount due for water and/or wastewater used.}~~

~~{(E) A clear and unambiguous statement that the bill is not from the utility, which shall be named in the statement.}~~

~~{(F) The name and address of the tenant to whom the bill is applicable.}~~

~~{(G) The name of the firm rendering the submetering bill and the name or title, address, and telephone number of the person or persons to be contacted in case of a billing dispute.}~~

~~{(H) The date by which the tenant must pay the bill.}~~

~~{(I) The name, address, and telephone number of the party to whom payment is to be made.}~~

~~(d) Each owner shall provide the tenant, at the time a lease is signed, a copy of this subchapter, or a narrative summary approved by the executive director, to inform the tenant of his rights and the owner's responsibilities under this subchapter. If a narrative summary is provided, a full and complete copy of this subchapter must be provided by the owner to the tenant upon the tenant's request. [Rendering and form of nonsubmetered master metered bill.]~~

~~{(1) Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period.}~~

~~{(2) The allocation of nonsubmetered master metered utilities costs to tenants shall be based on one or a combination of the following methods:}~~

~~{(A) The total square footage living area of the dwelling unit as a percentage of the total square footage living area of all dwelling units of the apartment house and all heated and/or air conditioned common areas. This percentage shall be stated in the rental agreement for each dwelling unit. or}~~

~~{(B) The individually metered or submetered utility usage of the dwelling unit as a percentage of the sum of the individually metered or submetered usage of all dwelling units.}~~

~~{(3) Methods to allocate nonsubmetered master metered utilities to tenants, other than the method outlined in this section, must be approved by the executive director.}~~

~~{(4) Billings to the tenant shall not be included as part of the rental payment or as part of billings for any other service to the tenant. A separate billing must be issued or, if issued on a multi-item bill, utility billing information must be separate and distinct from any other charges on the bill.}~~

~~(e) Due date. The due date of the bill shall not be less than seven days after issuance. A bill for service is delinquent if not received by the party indicated on the bill by the due date. The postmark date, if any, on the envelope of the bill or on the bill itself shall constitute proof of the date of issuance. An issuance date on the bill shall constitute proof of the date of issuance if there is no postmark on the envelope or bill. If the due date falls on a holiday or weekend, the due date for payment purposes shall be the next work day after the due date.~~

~~(f) Disputed bills. In the event of a dispute between the tenant and the owner regarding any bill, the owner shall forthwith make such investigation as shall be required by the particular case, and report the results thereof to the tenant. The investigation and report shall be completed within 30 days from the date the tenant notified the owner of the dispute.~~

~~(g) Tenant access to submeter [submetering] records. The tenants of any dwelling unit whose water consumption or wastewater based on water consumption is submetered shall be allowed by the owner to review and copy the utility bill [master billing] for the current month's billing period and for the 12 preceding months, and all submeter readings of the entire apartment house~~

[øf], condominium, mobile home park or multiple use facility for the current month and for the 12 preceding months.

(h) Estimated submeter [submetering] bills. Estimated bills shall not be rendered unless the submeter [meter] has been tampered with or is out of order, and in such case the bill shall be distinctly marked as an estimate .[sueh]

(i) Overbilling and underbilling. If billings are found to be in error, the owner shall calculate a billing adjustment. If the tenant is due a refund, an adjustment shall be made for the entire period of the overcharges. If the tenant was undercharged, the owner may backbill the tenant for the amount which was underbilled for a period not to exceed six months. If the underbilling is \$25 or more, the owner shall offer the [tø sueh] tenant a deferred payment plan option, for the same length of time as that of the underbilling. Adjustments for usage by a previous tenant may not be backbilled to the current tenant.

(j) Payments. Unless clearly designated by the tenant, payments shall be applied first to rent and then to utilities. The owner shall not ask the tenant to waive the option of designating how each of the tenant's payments is applied.

(k) Late fee. A one time penalty not to exceed 5.0% may be made on delinquent accounts. If such penalty is applied, the bill shall indicate the amount due if paid by the due date and the amount due if the late penalty is incurred. No late penalty may be applied unless agreed to by the tenant in a written lease or condominium document which states the [exact dollar ør] percentage amount of such late penalty.

(l) A reconnect fee may be applied if submetered or allocated utility service [tø the tenant] is disconnected for non-payment of bills in accordance with §291.126 of this title (relating to Discontinuance of Service). Such reconnect fee shall be calculated based on the average actual cost to the owner for the expenses associated with reconnecting service , [the reconnection] but under no circumstance shall exceed \$10. No reconnect charge may be applied unless agreed to by the tenant in a written lease or condominium document w hich states the exact dollar amount of such reconnect charge.

(m) Billing form. Bills shall be rendered for the same billing period as that of the utility, generally monthly, unless service is rendered for less than that period. If issued on a multi-item bill, charges for submetered or allocated utility service must be separate and distinct from any other charges on the bill. Submetered or allocated charges shall not be included as part of the rental fee or as part of charges for any other service to the tenant. The bill must clearly state the water or wastewater is "submetered" or "allocated" as applicable and shall include all of the following: [The owner shall not impose any extra charges on the tenant over and above those charges which are billed by the utility to the owner. The bill may not include a deposit, late penalty, reconnect charge, or any other charges except as provided in paragraphs (k) and (l) of this section.]

(1) The total amount due for water and/or wastewater used;

(2) A clear and unambiguous statement that the bill is not from the utility which shall be named in the statement;

(3) The name and address of the tenant to whom the bill is applicable;

(4) The name of the firm rendering the bill and the name or title, address, and telephone number of the firm or person to be contacted in case of a billing dispute;

(5) The date by which the tenant must pay the bill;

(6) The name, address, and telephone number of the party to whom payment is to be made; and

(7) The amount due if a late payment penalty is incurred.

(n) Calculating submetered bill.

(1) Bills shall be rendered as promptly as possible following the reading of submeters. Submeters shall be read within three days of the scheduled reading date of the utility's master meter.

(2) The billing unit shall be that used by the utility in its billing to the owner such as gallons or cubic feet.

(3) The tenant's submeter bills shall be calculated in the following manner. After the water or wastewater bill is received from the utility, the owner shall divide the total net charges for water and/or wastewater utilities, plus applicable tax and surcharges, by the total number of billing units to obtain an average cost per billing unit. This average cost shall then be multiplied by the tenant's consumption to calculate the tenant's bill.

(4) In addition to the information required in subsection (m) of this section, the tenant's bill for submetered service shall include all of the following:

(A) The date and reading of the submeter at the beginning and at the end of the period for which the bill is rendered;

(B) The number of billing units metered;

(C) The cost per billing unit.

(o) Calculating allocated bill. The calculation of allocated utility service costs to tenants shall be based on one of the following methods. Any method other than the methods outlined in this section must be approved by the executive director before it is implemented. Within 275 days after the effective date of the subchapter, an owner using any method other than those outlined in this section must obtain written authorization from the executive director approving an alternate method or adopt one of the following allocation methods and provide notice to tenants of this change as required by §291.125(b) of this title (relating to Rental Agreement and Billing).

(1) The number of occupants in the dwelling unit as a percentage of the total number of occupants in all dwelling units;

(2) The individually submetered hot water usage of the dwelling unit as a percentage of all individually submetered hot water usage of all dwelling units;

(3) The individually metered or submetered electricity consumption of the dwelling unit as a percentage of all individually metered or submetered electricity consumption. §291.126. Discontinuance of Service.

§291.126. *Discontinuance of Service.*

(a) Disconnection for delinquent bills. Utility service may only be disconnected for nonpayment of utility bills. A condominium tenant's submetered or allocated utility service shall not be disconnected for nonpayment of any charges or assessments owed by a condominium member when those charges or assessments are unrelated to the service being disconnected. A tenant's utility service may be disconnected if a bill has not been paid within 12 days from the date of issuance and proper notice has been given. Proper notice shall consist of a separate mailing or hand delivery at least five days prior to a stated date of disconnection, with the words "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where a tenant can go

during normal working hours to make arrangements for payment of the bill and for reconnecting [~~reconnection of~~] service.

(b) Disconnection on holidays and weekends. Unless a dangerous condition exists which is related to the type of service provided, or unless the tenant requests disconnection, service shall not be disconnected on a day, or on a day immediately preceding a day, when the owner or his representative is [~~personnel of the apartment house or mobile home park are~~] not available to collect payments [~~for the purpose of making collections~~] and reconnect [~~reconnecting~~] service.

§291.127. *Submeters.*

(a) Submeter requirements.

(1) Use of submeter. Unless otherwise provided by the executive director, no dwelling unit may be submetered unless all dwelling units are submetered. [All water sold by an owner shall be charged for by meter measurements.]

(2) Installation by owner. Unless otherwise authorized by the executive director, each owner shall be responsible for providing, installing, and maintaining all submeters necessary for the measurement of water or wastewater to its tenants.

(b) Submeter records. Each owner shall keep the following records.

(1) Submeter equipment record. Each owner shall keep a record of all of its submeters, showing the tenant's address and date of the last test.

(2) Records of submeter tests. All submeter tests shall be properly referenced in the submeter record required by this section. The record of each test made shall show the identifying number of the submeter, the standard meter and other measuring devices used, the date and kind of test made, by whom made, the error (or percentage of accuracy), and sufficient data to permit verification of all calculations.

(c) Submeter readings. In general, each meter shall indicate clearly the gallons for which charge is made to the tenant.

(d) Submeter tests on request of tenant. Upon the request of a tenant, each owner shall either: [Each owner shall, upon the request of a tenant, and if the tenant so desires, in the tenant's presence or in that of the tenant's authorized representative, make a test of the accuracy of the tenant's submeter. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If the submeter tests within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters, a charge of up to \$25 may be charged the tenant for making the test. However, if the submeter has not been tested within a period of one year, or if the submeter's accuracy is not within the appropriate accuracy standards, no charge shall be made to the tenant for making the test. Following completion of any requested test, the owner shall promptly advise the tenant of the results of the test.]

(1) Provide evidence the meter was calibrated or tested within the preceding 12 month period and found to be within the accuracy standards set by the American Water Works Association (AWWA) for water or wastewater meters and provide the evidence to the tenant at no charge; or

(2) Make a test of the accuracy of the tenant's submeter in the tenant's presence if the tenant so desires. The test shall be made during reasonable business hours at a time convenient to the tenant desiring to observe the test. If evidence of the submeter's accuracy as described in paragraph (1) of this subsection was provided and the

submeter is found to be accurate, a fee of up to \$25 may be charged the tenant for the test. No fee may be charged the tenant for the test if the submeter's accuracy is not within the appropriate accuracy standards. Following completion of any requested test, the owner shall promptly advise the tenant of the test results.

(e) Bill adjustment due to submeter error. If any submeter is found not to be within the accuracy standards in subsection (d) of this section, proper correction shall be made of previous readings. An adjusted bill shall be rendered in accordance with §291.125(i) of this title (relating to Rental Agreement and Billing). If a submeter is found not to register for any period, unless bypassed or tampered with, the owner may make a charge for units used, but not metered, for a period not to exceed one month based on amounts used under similar conditions during periods preceding or subsequent thereto, or during the corresponding period in previous years.

~~{(f) Bill adjustment due to conversion. If, during the 90 day period preceding the installation of meters, an owner increases rental rates, such increase is attributable to increased costs of utilities, then such owner shall immediately reduce the rental rate by the amount of such increase shall refund all of such increase that has previously been collected within said 90 day period}~~

~~(f) [(g)] Location of submeters. Submeters or cut-off valves in conjunction with the submeters, shall be installed in accordance with applicable plumbing codes and standards set by the AWWA unless otherwise approved by the executive director, and will be readily accessible for reading, testing, and inspection where such activities will cause minimum interference and inconvenience to the tenant.~~

~~(g) [(h)] Submeter testing facilities and equipment. Unless other reference standards and procedures are approved by the executive director the following standards and procedures must be followed.~~

(1) Reference standards. Each owner shall provide or have access to suitable indicating instruments as reference standards for insuring the accuracy of shop and portable instruments used for testing [~~billing~~] submeters.

(2) Testing of reference standards. Reference standards of all kinds shall be submitted once each year or on a scheduled basis approved by the executive director to a standardizing laboratory of recognized standing, for the purpose of testing and adjustment.

(3) Calibration of test equipment. All shop and portable instruments used for testing billing submeters shall be calibrated by comparing them with a reference standard at least once each year during the time such test instruments are being regularly used. Test equipment shall at all times be accompanied by a certified calibration card signed by the proper authority, giving the date when it was last certified and adjusted. Records of certifications and calibrations shall be kept on file in the office of the owner.

~~(h) [(i)] Accuracy requirements for submeters. Submeters shall be adjusted as close as possible to the condition of zero error. The tolerances are specified only to allow for necessary variations.~~

~~(i) [(j)] Submeter tests prior to installation. No submeter shall be placed in service unless its accuracy has been established. If any submeter is removed from actual service and replaced by another submeter for any purpose whatsoever, it shall be properly tested and adjusted before being placed in service again.~~

~~[(k) Restriction Unless otherwise provided by the executive director, no dwelling unit may be submetered unless all dwelling units are submetered.]~~

(j) ~~(4)~~ Same type meters required. All submeters which are served by the same master meter shall be of the same type.

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 October 5, 1998.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



Subchapter I. Wholesale Water or Sewer Service

30 TAC §291.138

STATUTORY AUTHORITY

The amendments are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction.

There are no other rules, codes or statutes that will be affected by this proposal.

§291.138. Filing of Rate Data.

(a) For purposes of comparing the rates charged in Texas by providers of water or sewer service for resale, the commission may require ~~requires~~ each provider of water or sewer service for resale to report the retail and wholesale rates it charges to purchasers.

(b) Within 30 days after receiving a written request from the executive director, a ~~By January 31st of each odd-numbered year each~~ provider of water or sewer service for resale shall file a report with the commission. The report must provide the information prescribed in a form prepared by the commission.

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

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For further information, please call: (512) 239-4640



Subchapter J. Enforcement, Supervision and Receivership

30 TAC §291.140, §291.144

STATUTORY AUTHORITY

The new rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.140 implements Texas Water Code §13.411. Section 291.144 implements Texas Water Code §13.418 and Texas Health and Safety Code 341.0485.

There are no other rules, codes or statutes that are affected by this proposal.

§291.140. Enforcement Action.

If the executive director has reason to believe that the failure of the owner or operator of a water utility to properly operate, maintain, or provide adequate facilities presents an imminent threat to human health or safety, the executive director shall immediately:

- (1) Notify the utility's representative; and
- (2) Initiate enforcement action consistent with:
 - (A) This subchapter; and
 - (B) Procedural rules adopted by the commission.

§291.144. Fines and Penalties.

(a) Disposition.

(1) Fines and penalties collected under Water Code Chapter 13, from a retail public utility that is not a public utility in other than criminal proceedings shall be paid to the commission and deposited in the general revenue fund.

(2) Fines and penalties collected from a public utility under Water Code, Chapter 13, in other than criminal proceedings shall be paid to the commission and deposited in the water utility improvement account (see subsection (b) of this section).

(3) A civil or administrative penalty payable to the state that is collected from a utility for a violation of Health and Safety Code, Subchapter C, Chapter 341, shall be deposited in the water utility improvement account (see subsection (b) of this section).

(b) Water Utility Improvement Account (General Revenue Fund.)

(1) Money in the account may be used only for:

(A) Capital improvements to the water or sewer system of a utility that has paid fines or penalties under Health and Safety Code, Subchapter C, Chapter 341, or under Water Code, Chapter 13, that have been deposited in the account; or

(B) Capital improvements and operating and maintenance expenses for a utility placed in receivership or under a temporary manager under Water Code, §13.4132.

(2) Money used under subsection (b)(1)(A) of this section for a utility's system may not exceed the amount of the civil or administrative penalties the utility has paid. Capital improvements made with money from the account may not be considered as invested capital of the utility for any purpose. If the utility is sold to another owner, a portion of the sales price equivalent to the percentage of the used and useful facilities that were constructed with money under subsection (b)(1)(A) of this section shall be immediately distributed equally to the current customers of the utility.

(3) Money used under subsection (b)(1)(B) of this section may not be considered as invested capital of the utility for any purpose.

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

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Margaret Hoffman

Director, Environmental Law Division

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For further information, please call: (512) 239-4640



Subchapter K. Provisions Regarding Municipalities

30 TAC §§291.150–291.153

STATUTORY AUTHORITY

The new rules are proposed under Texas Water Code §5.103, which provides the commission the authority to adopt and enforce rules necessary to carry out its powers and duties under the laws of this state, and under Texas Water Code §13.041(b) which requires the commission to adopt rules reasonably required to exercise its jurisdiction. Section 291.152 implements Texas Water Code §13.045. Section 291.153 implements Texas Water Code §13.086.

There are no other codes, rules or statutes that will be affected by this proposal.

§291.150. Jurisdiction of Municipality: Surrender of Jurisdiction.

(a) The governing body of a municipality by ordinance may elect to have the commission exercise exclusive original jurisdiction over the utility rate, operation, and services of utilities, within the incorporated limits of the municipality. The governing body of a municipality that surrenders its jurisdiction to the commission may reinstate its jurisdiction by ordinance at any time after the second anniversary of the date on which the municipality surrendered its jurisdiction to the commission, except that the municipality may not reinstate its jurisdiction during the pendency of a rate proceeding before the commission. The municipality may not surrender its jurisdiction again until the second anniversary of the date on which the municipality reinstates jurisdiction.

(b) The City of Coffee City, a municipality, surrendered its jurisdiction to the commission effective December 4, 1993.

(c) The City of Nolanville, a municipality, surrendered its jurisdiction to the commission effective April 18, 1996.

(d) The City of Aurora, a municipality, surrendered its jurisdiction to the commission effective April 14, 1997.

(e) The City of Arcola, a municipality, surrendered its jurisdiction to the commission effective May 5, 1998.

§291.151. Applicability of Commission Service Rules Within the Corporate Limits of a

Municipality. The commission's rules relating to service and response to requests for service will apply to utilities operating within the corporate limits of a municipality unless the municipality adopts its own rules. These rules include Subchapters E and F of this chapter.

§291.152. Notification Regarding Use of Revenue.

At least annually and before any rate increase, a municipality shall notify in writing each water and sewer retail customer of any service or capital expenditure not water or sewer related funded in whole or in part by customer revenue.

§291.153. Fair Wholesale Rates for Wholesale Water Sales to a District.

(a) A municipality that makes a wholesale sale of water to a special district created under §52, Article III, or §59, Article XVI, Texas Constitution, and that operates under Title 4 (General Law Districts), or under Chapter 36 (Groundwater Conservation Districts) shall determine the rates for that sale on the same basis as for other similarly situated wholesale purchasers of the municipality's water.

(b) This section does not apply to a sale of water under a contract executed before September 1, 1997.

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 October 5, 1998.

TRD-9815513

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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For further information, please call: (512) 239-4640



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part III. Texas Youth Commission

Chapter 97. Security and Control

Subchapter A. Security and Control

37 TAC §97.15

The Texas Youth Commission (TYC) proposes new §97.15, concerning drug testing youth. The new section will establish procedures by which TYC youth may be drug tested to monitor substance abuse problems. The process will facilitate TYC staff holding youth accountable for their behavior and meet individual treatment needs for those youth.

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 youth, staff, and the 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 Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The new section is proposed under the Human Resources Code, §61.075, which provides the Texas Youth Commission with the authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

§97.15. Drug Testing Youth.

(a) Purpose. The purpose of this rule is to establish procedures by which TYC implements a testing program designed to monitor substance abuse problems, hold youth under agency jurisdiction accountable for their behavior, meet individual treatment needs and act as a deterrent to alcohol and other drug use.

(b) Applicability. This policy applies to all youth under TYC jurisdiction whether supervised by TYC employees or by contracted service/program employees.

(c) Explanation of Terms Used.

(1) Laboratory confirmation testing - The testing of urine or blood specimens by professional technologists or technicians at a commercial laboratory to confirm the results of an Alcohol or Drug Screening Test.

(2) Negative result - Test result indicating a drug is not detected at or above the threshold of a test.

(3) On-site testing - The testing of a breath, saliva, or urine sample at a site other than a laboratory, using trained staff.

(4) Positive result - Drug detected at or above the threshold of a test.

(5) Testing program manager - The superintendent at a facility, the parole supervisor or quality assurance administrator, or their designees will designate a testing program manager to be responsible for answering questions about the alcohol or drug testing program and coordinating aspects of the drug testing process.

(d) Any youth under TYC jurisdiction may be tested for drug and/or alcohol use.

(e) Testing may be conducted for cause or on a random or routine basis.

(f) During orientation to TYC, each youth shall be given notice that:

(1) He or she is subject to alcohol and drug testing, which may be conducted for cause or on a random or routine basis.

(2) Refusal to submit to an alcohol or drug test (or failure to provide a urine specimen within two hours of request) is a major rule violation and will result in appropriate sanctions.

(3) A positive result on an alcohol or drug test is a major rule violation and will result in appropriate sanctions.

(g) The frequency of testing individual youth will be determined locally.

(h) All breath, saliva, or urine tests will be conducted, scored, and interpreted according to the instrument manufacturer's instructions.

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 October 12, 1998.

TRD-9815943

Steve Robinson

Executive Director

Texas Youth Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 424-6244



37 TAC §97.21

The Texas Youth Commission (TYC) proposes an amendment to §97.21, concerning mechanical restraint equipment. The amendments to the section will change the title to approved restraint equipment and permit the use of the chemical agent Orthochlorobenzalmalononitrile (CS), also known as tear gas, in TYC institutions as authorized when necessary to regain control when TYC youth are involved in a major disruption which is likely to result in major property destruction and/or injury to staff, youth, or other persons.

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 of TYC youth, staff, and others. 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 Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.075, concerning determination of treatment, which provides the Texas Youth Commission authority to order the child's confinement under conditions it believes best designed for the child's welfare and the interests of the public.

The proposed rule implements the Human Resource Code, §61.034.

§97.21. Mechanical Approved Restraint Equipment.

(a) (No change.)

(b) Applicability.

(1) (No change.)

(2) Chemical agent may be employed only in compliance with (GAP) §97.25 of this title (relating to Use of Force: Chemical Agents).

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

(e) Approved Equipment. The following restraint devices and chemical agents are approved for use by TYC staff. All other devices are specifically disapproved.

(1)-(10) (No change.)

(11) Chemical Agents - Oleoresin Capsicum (OC), also known as pepper spray, and Orthochlorobenzalmalononitrile (CS), also known as tear gas, as authorized.

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 October 12, 1998.

TRD-9815929
Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 424-6244



37 TAC §97.29

The Texas Youth Commission (TYC) proposes an amendment to §97.29, concerning escape/abscondence and apprehension. The amendment to the section will define failure to report as a violation of a youth's parole, and permit TYC staff to notify appropriate personnel when a youth fails to report, as required, to an assigned location.

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 the 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 Gail Graham, Policy and Manuals Manager, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765.

The amendment is proposed under the Human Resources Code, §61.0811, which provides the Texas Youth Commission with the authority to develop a management system for parole services that objectively measures and provides for the classification of children based on the level of children's needs and the degree of risk they present to the public.

The proposed rule implements the Human Resource Code, §61.034.

§97.29. *Escape/Abscondence and Apprehension.*

(a) Purpose. The purpose of this rule is to acknowledge a relationship with TYC, law enforcement, and Texas/National Crime Information Center (TCIC/NCIC) with regard to reporting and apprehending youth in TYC custody who escape or abscond from their assigned location, supervision, or who fail to report as required [assignments].

(b) Applicability. This rule applies to all youth in TYC jurisdiction whether supervised by TYC staff or contract staff.

(c) [(b)] Definition of Terms Used.

(1) Failure to report occurs when a youth assigned to home level restriction fails on two or more occasions to report as required by the youth's most recent case plan.

(2) [(4)] Abscond occurs when a youth assigned to home level of restriction leaves any [TYC]-designated location without permission of staff and his/her whereabouts are unknown by the supervising staff. [(A youth who fails to report to the assigned parole officer but whose whereabouts are known is not an absconder.)]

[(2) Attempted Abscond occurs when a youth is seen attempting to leave any TYC-designated location without permission of staff.]

(3) Escape occurs when a youth assigned to a minimum, medium or high level restriction facility:

(A) leaves the property of a TYC facility or contract program or other designated location without permission of staff; or

(B) (No change.)

(4) (No change.)

(d) [(e)] When a youth escapes or absconds, or fails to report, Texas Youth Commission (TYC) staff will make concerted efforts to apprehend the youth with assistance of law enforcement officials, staff and other affected parties.

(e) [(d)] Directives to Apprehend shall be issued by an agency staff according to Texas/National Crime Information Center (TCIC/NCIC) policy and procedures and DPS/FBI guidelines.

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 October 9, 1998.

TRD-9815893
Steve Robinson
Executive Director
Texas Youth Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 424-6244



Part IX. Texas Commission on Jail Standards

Chapter 259. New Construction Rules

The Texas Commission on Jail Standards proposes amendments to §§259.107, 259.109, 259.112, 259.114, 259.121-259.124, 259.130, 259.132, 259.133, 259.136-259.143, 259.159, 259.162, 259.165, 259.166, concerning New Maximum Security Design, Construction and Furnishing Requirements, §§259.208, 259.210, 259.213, 259.215, 259.222-259.225, 259.230, 259.232-259.240, 259.242, 259.255, 259.258, 259.261, 259.262, concerning New Lockup Design, Construction and Furnishing Requirements, §§259.301, 259.306, 259.310, 259.312, 259.317-259.320, 259.325, 259.327, concerning New Medium Security Design, Construction and Furnishing Requirements, §§259.401, 259.406, 259.412, 259.417-259.420, 259.425, 259.427, concerning New Minimum Security Design, Construction and Furnishing Requirements, §259.602, concerning Temporary

Housing - Buildings, §§259.707, 259.709, 259.712, 259.714, 259.721, 259.722, 259.724, 259.725, 259.731, concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements. The Texas Commission on Jail Standards also proposes the repeal of §§259.328-259.364, concerning New Medium Security Design, Construction and Furnishing Requirements, §§259.732-259.773, concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements, §§259.328-259.359, concerning New Medium Security Design, Construction and Furnishing Requirements and §§259.732-259.771, concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements.

The rules are proposed to provide a standard that is more consistent with the current trends in jail construction. The Texas Commission on Jail Standards contemporaneously proposes the review of Chapter 259 elsewhere in this issue of the *Texas Register*.

Jack E. Crump, executive director, Texas Commission on Jail Standards, 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 rules.

Mr. Crump 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 more consistent and updated regulations. 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 proposal may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas 78711.

Subchapter B. New Maximum Security Design, Construction and Furnishing Requirements

37 TAC §§259.107, 259.109, 259.112, 259.114, 259.121, 259.124, 259.130, 259.132, 259.133, 259.136–259.143, 259.159, 259.162, 259.165, 259.166, 259.170

The amendments and new rule are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.107. *Administrative Space.*

The facility shall provide sufficient space for administrative, program and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall be provided and [not be] located outside [within] the security perimeter.

§259.109. *Arsenal.*

An arsenal or secure storage area for weapons, ammunition, and tactical equipment should be provided and shall be located outside the security perimeter.

§259.112. *Observation.*

Inmate occupied areas shall be constructed to facilitate observation of inmates. The design shall allow observation into inmate housing areas without requiring staff to enter inmate safety vestibules.

§259.114. *Segregation.*

(a) Systems [Facilities] shall provide separate cells and day rooms of varying capacities for inmates to provide adequate segregation of different classifications of male and female inmates as required by Chapter 271, of this title (relating to Classification and Separation of Inmates). [~~Classification and Segregation~~].

(b) Single occupancy cells shall be provided to house inmates classified in administrative, disciplinary, and medical segregation in a quantity to meet the following requirements:

(1) Systems [Facilities] having an inmate capacity of 200 or less shall provide sufficient separation cells to accommodate not less than 10% of the facility capacity;

(2) Systems [Facilities] having an inmate capacity of over 200 shall provide [have] a minimum of 20 separation cells and a sufficient number of single cells with adjacent day rooms to accommodate a total of at least 10% of the capacity. [~~in single occupancy cells.~~] Day rooms provided for these cells shall be arranged to accommodate no [not] more than 24 [42] inmates.

(c) The capacity of each cell and day room shall not exceed 20% of the facility capacity.

(d) The total capacity of all dormitory space shall not exceed 40% of the system's capacity. [~~Dormitories shall not exceed 40% of the facility capacity.~~]

[~~(e) Facilities initiated prior to May 1, 1992, which provide a sufficient number of single cells to accommodate at least 30% of the facility capacity and sufficient separation cells to comply with the facility classification plan and do not provide dormitory housing which exceeds 40% of the jail capacity are exempt from subsections (b) and (c) of this section.~~]

§259.121. *Visiting Areas.*

Visiting areas shall be provided and shall be designed to provide adequate visitation for the capacity of the facility. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the inmate and visitor. Visiting areas [~~for maximum security and medium security inmates~~] shall be designed to prevent passage of contraband. Provisions shall be made for disabled visitors and inmates. Seating shall be provided for both inmates and visitors. A secure visiting area should be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for a direct passage of legal paper between inmates and attorneys during visitation.

§259.122. *Control Rooms/Guard Stations [Guard Stations].*

A sufficient number of guard stations shall be provided on each floor where inmates are housed. Staff toilets and lavatories shall be located within the security perimeter and [provided] in close proximity to control rooms and guard stations. The design shall allow access to control rooms without requiring staff to enter inmate safety vestibules.

§259.123. *Kitchen.*

A properly equipped kitchen of adequate size [~~and properly equipped~~] shall be provided within the system and shall include the following:

(1)-(7) (No change.)

§259.124. *Dining Space.*

Group dining may be provided and shall avoid concentrations of more than 96 inmates. [~~Group dining may be provided. Group dining~~]

should avoid concentrations of more than 24 inmates, (48 for direct supervision).]

§259.130. *Medical Space/Infirmary [Infirmary].*

An infirmary shall [should] be provided for systems [facilities] of 480 [200] or more capacity. When medical space in new construction or an infirmary is provided, the following minimum components shall be included:

(1)-(6) (No change.)

(7) at least one single occupancy, negative pressure room or cell; [with 80 square feet of floor space;]

(8)-(12) (No change.)

§259.132. *Exercise Area.*

One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a security enclosure and shall be enclosed with a secondary secured perimeter. Where outdoor exercise areas are not provided, facility design shall provide for access to sunlight. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1000 square feet for each exercise area. Exercise areas serving multiple inmates housed in segregation shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 500 square feet for each exercise area. Individual recreation areas serving a single inmate in segregation shall provide no less than 200 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area. [Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement.]

§259.133. *Single Cells.*

Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, mirror, table, and seat separate from the bunk.

§259.136. *Day Rooms.*

All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Day rooms shall [may] be contiguous with inmate living areas. [provided that space requirements for living areas and day rooms are met.] Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room [cell].

§259.137. *Separation Cells.*

Separation cells shall include the following features and equipment.

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles

circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell;

(2) Plumbing. Cells shall be provided with a toilet, lavatory, and shower; [and floor drain;]

(3) Cell Size. Cells shall contain not less than 80 [40] square feet of clear floor space.

§259.138. *Holding Cells.*

(a) One or more holding cells shall be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" [16" to 20"] above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2)-(5) (No change.)

(b) Remote Holding Cells. Holding cells that are separate from the facility and utilized for direct court holding, processing, or for inmates awaiting transportation. Inmates shall not be held for more than eight hours and the cell shall include the following features [and equipment]:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" [16" to 20"] above the finished floor, and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2)-(5) (No change.)

(6) Smoke Detection. Smoke detection capability shall be provided. The alarm shall annunciate [enunciate] at a staffed location in close proximity to the cell. Additional life safety items shall be compatible with the remainder of the building;

(7) Audible Communication. Audible communications shall be provided.

§259.139. *Detoxification Cells.*

Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than 8" above the finished floor, not less than 2' 0" wide and shall extend the length of the cell;

(2) Plumbing. Cells shall be provided with one or more vandal resistive flushing floor drains with outside controls, or detention type [vandal resistive] toilet and lavatory and [standard] vandal resistive floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to eight [12] inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.140. *Violent Cells.*

A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment:

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

(4) Padding. Walls, floor, door and bench shall be completely covered with a material to protect the inmate from self injury. The type of material used to cover the walls, floor, and bench shall be fire resistive and nontoxic.

§259.141. *Dimensions.*

All cells and day rooms shall be not less than 8' 0" from finished floor to ceiling and 5' 6" from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than 6' 0" [4' 0"] wide.

§259.142. *Safety Vestibules.*

Safety vestibules shall be provided for each inmate living area and contiguous day room used for confinement of three or more inmates, with no more than three living areas being served by one vestibule. All entrances to the security perimeter from administrative and/or public areas shall be provided with a safety vestibule.

(1) Safety vestibules shall have one or more interior doors and a main entrance door.

(2) Doors shall be arranged to be locked and unlocked by control means located outside of the inmate living area and safety vestibule.

(3) [Effective September 1, 1983, where] Where doors have an interlocking security feature, provisions shall be made for an override capability in the event an emergency requires both doors to be opened simultaneously.

§259.143. *Furnishings for Inmate Housing Areas.*

(a) Bunks. Bunks shall be fire resistive and securely anchored. The mattress surface of the bunk shall measure not less than 2' 3" wide and 6' 3" long.

(b) Toilets and Lavatories. Stainless steel detention [Detention] type toilets and lavatories shall be provided in cells and day rooms. In direct supervision living areas, they shall be constructed in such manner and of such material so as to resist vandalism. Based on design capacity, each cell and day room shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than 2' 6" square per showerhead and not less than 7' 0" high. Construction shall be of vandal resistive materials and should be of materials which resist the action of soap and water. Drying areas of not less than 2' 6" square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each day room, unless otherwise approved by the Commission, shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistive, securely anchored, and reasonably remote from toilet areas. Tables and seating in direct supervision day rooms are not required to be anchored. Tables and benches shall be not less than 12" wide, and

linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12" in diameter. Seating height of 17" to 19" [16" to 20"] shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend a minimum of [from about] 15" above the finished floor to 5' [about 4' 6"] high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.159. *Access Doors/Plumbing Chases. [Access Doors]*

All plumbing and mechanical access doors and panels shall be constructed and secured with locks or vandal resistive screws commensurate to the security sought to be achieved. Plumbing runs shall be a minimum 3' wide.

§259.162. *Plumbing.*

Plumbing work shall meet the requirements of the International Plumbing [Southern Standard Building] Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Lavatories in court holding cells are not required to provide warm water. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.165. *Floor Drains.*

Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Floor drains may be provided in chases serving single and separation cells. Drain covers shall be provided and securely anchored with vandal resistive [proof] screws.

§259.166. *Lighting.*

Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. Maximum security lighting shall be provided in inmate housing areas and detention type lighting provided within inmate occupied areas. [All lighting fixtures in cells and day rooms shall be detention type.] Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.170. *Negative Pressure Cell.*

A minimum of one single, negative pressure cell shall be provided for systems with a capacity of 100 or more inmates and contain the following features and equipment:

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuted with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell;

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain;

(3) Cell Size. Cells shall contain not less than 80 clear square feet of floor space.

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 October 12, 1998.

TRD-9815945

Jack E. Crump

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-5505



Subchapter C. New Lockup Design, Construction and Furnishing Requirements

37 TAC §§259.208, 259.210, 259.213, 259.215, 259.222–259.225, 259.230, 259.232–259.240, 259.242, 259.255, 259.258, 259.261, 259.262

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.208. *Administrative Space.*

The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall be provided and ~~not be~~ located outside ~~within~~ the security perimeter.

§259.210. *Arsenal.*

An arsenal or secure storage area for weapons, ammunition and tactical equipment should be provided and shall be located outside the security perimeter.

§259.213. *Observation.*

Inmate occupied areas shall be constructed to facilitate observation of inmates. The design shall allow observation into inmate housing areas without requiring staff to enter inmate safety vestibules.

§259.215. *Segregation.*

Design shall provide for adequate segregation of inmates in accordance with the facility classification plan as required by Chapter 271, of this title (relating to Classification and Segregation of Inmates ~~[Classification and Segregation]~~).

§259.222. *Visiting Areas.*

Visiting areas shall be provided. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the visitor and inmate. Provisions shall be made for disabled visitors and inmates. Seating shall be provided for both visitors and inmates. A secure visiting area should be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for a direct passage of legal paper between inmates and attorneys during visitation.

§259.223. *Control Rooms/Guard Stations* ~~[Guard Stations]~~.

A sufficient number of guard stations shall be provided on each floor where inmates are housed. Staff toilets and lavatories shall be located within the security perimeter and ~~[provided]~~ in close proximity to control rooms and guard stations. The design shall allow access to control rooms without requiring staff to enter inmate safety vestibules.

§259.224. *Kitchen.*

A properly equipped kitchen of adequate size ~~[and properly equipped]~~ shall be provided within the system and shall include the following:

(1)-(7) (No change.)

§259.225. *Dining Space.*

Group dining may be provided and shall avoid concentrations of more than 96 inmates. ~~[Group dining may be provided. Group dining should avoid concentrations of more than 24 inmates, (48 for direct supervision)-]~~

§259.230. *Single Cells.*

Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, mirror, table, and seat separate from the bunk.

§259.232. *Dormitories.*

Dormitories shall contain 9 to 48 ~~[24]~~ bunks. ~~[except direct supervision dormitories which may contain up to 48 bunks.]~~ Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets, lavatories, and may include showers. Cells shall contain table and seating if day room space is not provided.

§259.233. *Day Rooms.*

Single cells, multiple occupancy cells, and dormitories may be provided with day rooms. Day rooms shall be designed for no more than 48 inmates. ~~[24 inmates except direct supervision day rooms may be designed for up to 48 inmates.]~~ Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Day rooms shall ~~[may]~~ be contiguous with inmate living areas. ~~[provided that space requirements for living areas and day rooms are met.]~~ Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room ~~[cell]~~.

§259.234. *Separation Cells.*

Separation cells shall include the following features and equipment:

(1) Furnishings. Each cell shall be provided with 1 bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell;

(2) Plumbing. Cells shall be provided with a toilet, lavatory, and shower; ~~[and floor drain;]~~

(3) Cell Size. Cells shall contain not less than 80 ~~[40]~~ square feet of clear floor space.

§259.235. *Holding Cells.*

One or more holding cells shall be provided to hold inmates pending booking, court appearance, identification, housing assignment, discharge, or other reason for temporary housing. Holding cells shall contain the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" [~~16" to 20"~~] above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2)-(5) (No change.)

§259.236. *Detoxification Cells.*

A facility shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than 8" above the finished floor, not less than 2' 0" wide and shall extend the length of the cell;

(2) Plumbing. Cells shall be provided with one or more vandal resistive flushing floor drains with outside controls, or detention type [~~vandal resistive~~] toilet and lavatory and [~~standard~~] vandal resistive floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to eight [~~12~~] inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.237. *Dimensions.*

All cells and day rooms shall be not less than 8' 0" from finished floor to ceiling and 5' 6" from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than 6' 0" [~~4' 0"~~] wide.

§259.238. *Safety Vestibules.*

Safety vestibules shall be provided for each inmate living area and contiguous day room used for confinement of three or more inmates, with no more than three living areas being served by one vestibule. All entrances to the security perimeter from administrative and/or public areas shall be provided with a safety vestibule.

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

(3) [~~Effective September 1, 1983, where~~] Where doors have an interlocking security feature, provisions shall be made for an override capability in the event an emergency requires both doors to be opened simultaneously.

§259.239. *Furnishings for Inmate Housing Areas.*

(a) Bunks. Bunks shall be fire resistive and securely anchored. The mattress surface of the bunk shall measure not less than 2' 3" wide and 6' 3" long.

(b) Toilets and Lavatories. Stainless steel detention [~~Detention~~] type toilets and lavatories shall be provided in cells and day rooms. Based on design capacity, each cell shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than 2' 6" square per showerhead and not less than 7' 0" high. Construction shall be of

vandal resistive materials and should be of materials which resist the action of soap and water. Drying areas of not less than 2' 6" square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each day room, unless otherwise approved by the Commission, shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistive, securely anchored, and reasonably remote from toilet areas. Tables and benches shall be not less than 12" wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12" in diameter. Seating height of 17" to 19" [~~16" to 20"~~] shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend a minimum of [~~from about~~] 15" above the finished floor to 5' [~~about 4' 6"~~] high and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.240. *Walls.*

Walls should be constructed to resist vandalism and facilitate ease of maintenance. Exterior and interior walls within inmate housing and activity areas shall be constructed as follows:

(1) Exterior walls:

(A) a minimum 8" concrete block vertically reinforced by #3 bars 8" on center and all cells filled with 2500 psi grout, or

(B) a minimum of 4" thick concrete plank reinforced with #4 bars 8" on center each way, or

(C) a minimum 3/16" thick steel plate.

(2) Interior walls:

(A) a minimum 6" concrete block vertically reinforced by #3 bars 8" on center and all cells filled with 2500 psi grout, or

(B) a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way, or

(C) a minimum 3/16" thick steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for exterior and interior wall construction. [Walls shall be constructed with due consideration to the security sought to be achieved.]

§259.242. *Ceilings.*

Ceilings within inmate housing areas shall be constructed of a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way or a minimum 10 gauge steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for ceiling construction. [Ceilings within the security perimeter shall be constructed of material not easily damaged and shall be commensurate with the security level of the adjacent walls.]

§259.255. *Access Doors/Plumbing Chases. [Access Doors]*

All plumbing and mechanical access doors and panels shall be constructed and secured with locks or vandal resistive screws commensurate to the security sought to be achieved. Plumbing runs shall be a minimum 3' wide.

§259.258. *Plumbing.*

Plumbing work shall meet the requirements of the International Plumbing [Southern Standard Building] Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.261. *Floor Drains.*

Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Floor drains may be provided in chases serving single and separation cells. Drain covers shall be provided and securely anchored with vandal [proof] screws.

§259.262. *Lighting.*

Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. Maximum security lighting shall be provided in inmate housing areas and detention type lighting provided within inmate occupied areas. [~~All lighting fixtures in cells and day rooms shall be detention type.~~] Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

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 D. New Medium Security Design, Construction and Furnishing Requirements

37 TAC §§259.301, 259.306, 259.310, 259.312, 259.317-259.320, 259.325, 259.327, 259.328-259.359

The amendments and new rules are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.301. *Facility Concept.*

Medium security facilities shall be designed only in conjunction with facilities which meet the requirements of Chapter 259, §§259.100-259.170 [~~259.100-259.169~~], of this title (relating to New Maximum Security Design [Maximum Security Design]), or Chapter 261,

§§261.100-261.171, of this title (relating to Existing Maximum Security Design). Inmates housed in medium security facilities shall be assessed according to the provisions of Chapter 271, of this title (relating to Classification and Separation of Inmates [Classification and Separation]).

§259.306. *Administrative Space.*

The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall be provided and [not be] located outside [within the] security perimeter.

§259.310. *Observation.*

Inmate occupied areas shall be constructed to facilitate observation of inmates. The design shall allow observation into housing areas without requiring staff to enter inmate safety vestibules.

§259.312. *Segregation.*

(a) Systems [Facilities] shall provide separate cells and day rooms of capacities for inmates to provide adequate segregation of different classifications of male and female inmates as required by Chapter 271, of this title (relating to Classification and Separation of Inmates [Classification and Separation]).

(b) Systems [Facilities] shall provide adequate single cells, separation cells, or holding cells, and may provide other special purpose cells.

§259.317. *Visiting Areas.*

Visiting areas shall be provided and shall be designed to provide adequate visitation for the capacity of the facility. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the inmate and visitor. Visiting areas shall be designed to prevent passage of contraband. Provisions shall be made for disabled visitors and inmates. Seating shall be provided for both visitors and inmates. A secure visiting area may be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for a direct passage of legal paper between inmates and attorneys during visitation.

§259.318. *Control Rooms/Guard Stations [Guard Stations].*

A sufficient number of guard stations shall be provided on each floor where inmates are housed. Staff toilets and lavatories shall be located within the security perimeter and [provided] in close proximity to control rooms and guard stations. The design shall allow access to control rooms without requiring staff to enter inmate safety vestibules.

§259.319. *Kitchen.*

A properly equipped kitchen of adequate size [~~and properly equipped~~] shall be provided within the system and shall include the following:

- (1)-(7) (No change.)

§259.320. *Dining Space.*

Group dining may be provided and shall avoid concentrations of more than 96 inmates. [~~Group dining may be provided. Group dining should avoid concentrations of more than 24 inmates, (48 for direct supervision).~~]

§259.325. *Medical Space/Infirmary [Infirmary].*

An infirmary shall [~~should~~] be provided for systems [facilities] of 480 [200] or more capacity. When medical space in new construction or

an infirmary is provided, the following minimum components shall be included:

(1)-(6) (No change.)

(7) at least one single occupancy negative pressure room or cell; [with 80 square feet of floor space;]

(8)-(12) (No change.)

§259.327. Exercise Area.

One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a security enclosure and provided with a secondary secured perimeter. Where outdoor exercise areas are not provided, facility design shall provide for access to sunlight. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1000 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area. [~~Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement.~~]

§259.328. Multiple Occupancy Cells.

Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Multiple occupancy cells should not be provided in direct supervision facilities.

§259.329. Dormitories.

Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets, lavatories, and may include showers.

§259.330. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with day rooms. Separation cells, violent cells, holding cells, and medical cells are exempt from this requirement. Day rooms shall be designed for no more than 48 inmates. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. A utility sink should be provided. Day rooms shall be contiguous with inmate living areas. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles should be individually controlled outside of the day room.

§259.331. Dimensions.

All cells and day rooms shall be not less than 8' 0" from finished floor to ceiling and 5' 6" from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than 6' 0" wide.

§259.332. Safety Vestibules.

Safety vestibules shall be provided for each inmate living area and contiguous day room used for confinement of three or more inmates, with no more than three living areas being served by one vestibule.

All entrances to the security perimeter from administrative and/or public areas shall be provided with a safety vestibule.

(1) Safety vestibules shall have one or more interior doors and a main entrance door.

(2) Doors shall be arranged to be locked and unlocked by control means located outside of the inmate living area and safety vestibule.

(3) Where doors have an interlocking security feature, provisions shall be made for an override capability in the event an emergency requires both doors to be opened simultaneously.

§259.333. Furnishings for Inmate Housing Areas.

(a) Bunks. Bunks shall be fire resistive and securely anchored. The mattress surface of the bunk shall measure not less than 2' 3" wide and 6' 3" long.

(b) Toilets and Lavatories. Stainless steel, detention type toilets and lavatories shall be provided in cells and day rooms. In direct supervision living areas, they shall be constructed in such manner and of such material so as to resist vandalism. Based on design capacity, each cell shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates.

(c) Showers. Shower areas shall be not less than 2' 6" square per showerhead and not less than 7' 0" high. Construction shall be of vandal resistive materials and should be of materials which resist the action of soap and water. Drying areas of not less than 2' 6" square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each day room, unless otherwise approved by the Commission, shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistive, securely anchored, and reasonably remote from toilet areas. Tables and seating in direct supervision day rooms are not required to be anchored. Tables and benches shall be not less than 12" wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12" in diameter. Seating height of 17" to 19" shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend a minimum of 15" above the finished floor to 5' and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

§259.334. Walls.

Walls should be constructed to resist vandalism and facilitate ease of maintenance. Exterior and interior walls within inmate housing and activity areas shall be constructed as follows:

(1) Exterior walls:

(A) a minimum 8" concrete block vertically reinforced by #3 bars 8" on center and all cells filled with 2,500 psi grout; or

(B) a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way; or

(C) a minimum 3/16" thick steel plate.

(2) Interior walls:

(A) a minimum 6" concrete block vertically reinforced by #3 bars 8" on center and all cells filled with 2,500 psi grout; or

(B) a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way; or

(C) a minimum 3/16" thick steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for exterior and interior wall construction.

§259.335. Floors.

Floors should provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.336. Ceilings.

Ceilings within inmate housing areas shall be constructed of a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way or a minimum 10 gauge steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for ceiling construction.

§259.337. Vermin Control.

Facility construction shall protect against the entrance and infestation of vermin. Materials and construction design shall contribute to efficient maintenance and housekeeping.

§259.338. Windows and Screens.

Operable windows shall be equipped with insect screens. The security level of windows in inmate occupied areas shall be commensurate with the security of the walls. Windows or skylights should be provided in inmate living and activity areas.

§259.339. Vent Grilles.

Vent grilles in walls and ceilings shall be commensurate with the security sought to be achieved. Vent grilles shall be securely anchored.

§259.340. Food Passes.

Food passes should not be less than 15 inches wide and four and one-half inches high. Lockable shutters should be provided to prevent passage of contraband.

§259.341. Detention Doors.

Doors may be of any material commensurate with the degree of security sought to be achieved. Doors shall be equipped with appropriate hardware and accessories to achieve the degree of security sought. All cell doors shall be not less than 28 inches in clear width and not less than six feet-eight inches high.

§259.342. Door Stops.

Door stops shall be provided for all detention doors and shall be placed to maintain a minimum of six inches between the leading edge of the door and the wall. Door closers manufactured with integral door stops may be used.

§259.343. Door Closers.

Door closers for all detention swinging doors shall be appropriate for the weight of the door.

§259.344. Keys and Locks.

Keys and locks for detention doors shall be manufactured especially for detention use and keys shall be mogul or paracentric type. An additional set of keys shall be maintained by the operator.

§259.345. Key Cabinets.

Key cabinets should be provided at suitable locations.

§259.346. Power Operated Locks.

Power operated locks shall be motor, solenoid, or pneumatic type and provide electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position switch and door position indicator shall be provided for all doors equipped with power operated locks. Heavy-duty, detention type door closers should be provided on all swinging doors equipped with power operated locks.

§259.347. Remote Controls.

Doors to single cells, multiple occupancy cells, dormitories, and day rooms shall be capable of being locked and unlocked individually by control means located remote from the cell area. Single cells with contiguous day room and separation cells which open directly on an exiting corridor are exempt from this requirement. All remote door controls shall be secure.

§259.348. Emergency Operation of Doors.

All doors to cells and day rooms shall be capable of being unlocked by a manual means at the door or a remote location.

§259.349. Access Doors/Plumbing Chases.

All plumbing and mechanical access doors and panels shall be constructed and secured with locks or vandal resistive screws commensurate to the security sought to be achieved. Plumbing runs shall be a minimum of 3' wide.

§259.350. Temperature Control.

Temperature levels shall be reasonably maintained between 65 degrees Fahrenheit and 85 degrees Fahrenheit in all occupied areas.

§259.351. Air Flow.

Ventilation shall be sufficient to admit fresh air and remove disagreeable odors. A sufficient number of windows capable of being opened, or a mechanical ventilation system provided with emergency electrical power, shall be provided in order to allow for sufficient ventilation in case of breakdown in the normal ventilation system or normal power failure.

§259.352. Plumbing.

Plumbing work shall meet the requirements of the International Plumbing Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.353. Sinks.

Sufficient mop sinks with hot and cold water shall be provided within the security perimeter and administrative area.

§259.354. Faucets.

Cold water faucets with standard hose connections shall be provided in plumbing access space or corridors. Distance between hose connections shall not be more than 100 feet apart.

§259.355. Floor Drains.

Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Drain covers shall be provided and securely anchored with vandal resistive screws.

§259.356. Lighting.

Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates. Inmates should be capable of controlling some lighting; override capability shall be provided. Medium security detention type lighting shall be provided in the inmate housing areas and detention type lighting in inmate occupied areas. Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.357. Audible Communication.

Two-way voice communication shall be available at all times between inmates and corrections officers.

§259.358. Television Monitoring.

Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.359. Electrical Power.

Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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

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37 TAC §§259.328-259.364

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.328. *Single Cells.*

§259.329. *Multiple Occupancy Cells.*

§259.330. *Dormitories.*

§259.331. *Day Rooms.*

§259.332. *Separation Cells.*

§259.333. *Holding Cells.*

§259.334. *Detoxification Cells.*

§259.335. *Violent Cells.*

§259.336. *Dimensions.*

§259.337. *Safety Vestibules.*

§259.338. *Furnishings for Inmate Housing Areas.*

§259.339. *Walls.*

§259.340. *Floors.*

§259.341. *Ceilings.*

§259.342. *Vermin Control.*

§259.343. *Windows and Screens.*

§259.344. *Vent Grilles.*

§259.345. *Food Passes.*

§259.346. *Detention Doors.*

§259.347. *Door Stops.*

§259.348. *Door Closers.*

§259.349. *Keys and Locks.*

§259.350. *Key Cabinets.*

§259.351. *Power Operated Locks.*

§259.352. *Remote Controls.*

§259.353. *Emergency Operation of Doors.*

§259.354. *Access Doors.*

§259.355. *Temperature Control.*

§259.356. *Air Flow.*

§259.357. *Plumbing.*

§259.358. *Sinks.*

§259.359. *Faucets.*

§259.360. *Floor Drains.*

§259.361. *Lighting.*

§259.362. *Audible Communication.*

§259.363. *Television Monitoring.*

§259.364. *Electrical Power.*

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**Subchapter E. New Minimum Security Design,
Construction and Furnishing Requirements**

37 TAC §§259.401, 259.406, 259.412, 259.417–259.420, 259.425, 259.427

The amendments are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.401. Facility Concept.

Minimum security facilities shall be designed only in conjunction with facilities which meet the requirements of Chapter 259, §§259.100-259.170 [259.100-259.169] of this title (relating to New Maximum Security Design [~~Maximum Security Design~~]) or §§261.100-261.171 of this title (relating to Existing Maximum Security Design. Inmates housed in minimum security facilities shall be assessed according to the provisions of Chapter 271, of this title (relating to Classification and Separation of Inmates [~~Classification and Separation~~]). Unlike jails or lockups for maximum custody and medium custody inmates, these facilities do not require stringent security measures.

§259.406. Administrative Space.

The facility shall provide sufficient space for administrative, program, and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall be provided and [~~not be~~] located outside [~~within~~] the security perimeter.

§259.412. Segregation.

(a) Facilities shall provide separate cells and day rooms of capacities for inmates to provide adequate segregation of male and female inmates as required by Chapter 271 of this title (relating to Classification and Separation of Inmates [~~Classification and Separation~~]).

(b) Facilities shall provide adequate single cells, separation cells, or holding cells, and may provide other special purpose cells.

§259.417. Visiting Areas.

Visiting areas shall be provided and shall be designed to provide adequate visitation for the capacity of the facility. Audible communications shall be provided between the inmate and visitor. Provisions shall be made for disabled visitors and inmates. Seating shall be provided for both visitors and inmates. A visiting area may be provided for contact visits from law enforcement officers, attorneys, clergy, and probation and parole officers. Provisions shall be made for a direct passage of legal paper between inmates and attorneys during visitation.

§259.418. Control Rooms/Guard Stations [~~Guard Stations~~].

A sufficient number of guard stations shall be provided on each floor where inmates are housed. Staff toilets and lavatories shall be provided in close proximity to control rooms and guard stations.

§259.419. Kitchen.

A properly equipped kitchen of adequate size [~~and properly equipped~~] shall be provided within the system and shall include the following:

- (1)-(7) (No change.)

§259.420. Dining Space.

Group dining may be provided and shall avoid concentrations of more than 96 inmates. [~~Group dining may be provided: Group dining~~

should avoid concentrations of more than 24 inmates, (48 for direct supervision)]

§259.425. Medical Space/Infirmary. [~~Infirmary~~]

An infirmary shall shall [~~should~~] be provided for facilities of 480 [200] or more capacity. When medical space in new construction or an infirmary is provided, the following minimum components shall be included:

- (1)-(6) (No change.)

(7) at least one single occupancy, negative pressure room or cell; [~~with 80 square feet of floor space;~~]

- (8)-(12) (No change.)

§259.427. Exercise Area.

One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a security enclosure and enclosed with a secondary secured perimeter. Where outdoor exercise areas are not provided, facility design shall provide for access to sunlight. A toilet and drinking fountain shall be readily available. Exercise areas for facilities of less than 100 inmates based on design capacity shall not be less than 800 square feet. Exercise areas for larger facilities shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1000 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area [~~Consideration shall be given to the requirement for inmates to be allowed access to sunlight for one hour per week after ten days confinement~~].

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Subchapter G. Temporary Housing-Buildings

37 TAC §259.602

The amendment is proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.602. Classification and Segregation.

Systems [~~Facilities~~] shall provide separate cells and day rooms of capacities for inmates to provide adequate segregation of different classifications of male and female inmates as required by Chapter 271 of this title (relating to Classification and Separation of Inmates). Temporary buildings may house maximum, medium and minimum custody inmates.

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

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Subchapter H. New Long-Term Incarceration Design, Construction and Furnishing Requirements

37 TAC §§259.707, 259.709, 259.712, 259.714, 259.721, 259.722, 259.724, 259.725, 259.731-259.771

The amendments and new rules are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.707. *Administrative Space.*

The facility shall provide sufficient space for administrative, program and clerical needs. Adequate space for equipment and supplies shall be provided to meet established and projected needs. These spaces shall be located outside the inmate housing areas. Evidence storage shall be provided and ~~not be~~ located outside ~~within~~ the security perimeter.

§259.709. *Arsenal.*

An arsenal or secure storage area for weapons, ammunition, and tactical equipment shall be provided and shall be located outside the security perimeter ~~inmate occupied areas~~.

§259.712. *Observation.*

Inmate occupied areas shall be constructed to facilitate observation of inmates. The design shall allow observation into inmate housing areas without requiring staff to enter inmate safety vestibules.

§259.714. *Segregation [Separation].*

(a) Facilities shall provide separate cells and day rooms of varying capacities for inmates to provide adequate separation of different classifications of male and female inmates as required by Chapter 271 of this title (relating to Classification and Separation of Inmates ~~Classification and Separation~~).

(b) Facilities shall provide a minimum of 20 separation cells and a sufficient number of single cells with adjacent day rooms to accommodate a total of at least 10% of the capacity. Day rooms provided for these single cells shall be arranged to accommodate no more than 24 inmates.

~~{(b) Single occupancy cells shall be provided to house not less than 5% of the capacity classified in administrative, disciplinary, and medical separation. A minimum of 2.5% of the capacity shall be provided in separation cells and a sufficient number of single cells with adjacent day rooms to accommodate a total of at least 5% of~~

~~the capacity in single and separation cells. Day rooms provided for these single cells shall be arranged to accommodate not more than 12 inmates.~~

(c) The capacity of each cell and day room shall not exceed 20% of the facility capacity.

(d) The total capacity of all dormitory space shall not exceed 40% of the facility capacity ~~[Dormitories shall not exceed 40% of the facility capacity].~~

§259.721. *Visiting Areas.*

Visiting areas shall be provided and shall be designed to provide adequate visitation for the capacity of the facility. Visitation areas shall be designed for the degree of security sought to be achieved. Audible communications shall be provided between the inmate and visitor. Visiting areas for inmates shall be designed to prevent passage of contraband. Provisions shall be made for disabled visitors and inmates. Seating shall be provided for both inmates and visitors. A secure visiting area should be provided for contact visits. Provisions shall be made for a direct passage of legal paper between inmates and attorneys during visitation.

§259.722. *Control Rooms/Guard Stations [Guard Stations].*

A sufficient number of guard stations shall be provided on each floor where inmates are housed. Staff toilets and lavatories shall be located within the security perimeter and provided ~~provided~~ in close proximity to guard stations. A staff toilet and lavatory shall be provided contiguous to control rooms. The design shall allow access to control rooms without requiring staff to enter inmate safety vestibules.

§259.724. *Kitchen.*

A properly equipped kitchen of adequate size ~~[and properly equipped]~~ shall be provided within the system and shall include the following:

(1)-(7) (No change.)

§ 259.725. *Dining Space.*

Group dining may be provided and shall avoid concentrations of more than 96 inmates. ~~[Group dining may be provided and shall be adequate for the size of the facility.]~~

§ 259.731. *Negative Pressure Cell.*

A minimum of one single, negative pressure ~~[medical]~~ cell shall be provided with the following features and equipment:

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell;

(2) Plumbing. Cells shall be provided with a toilet, lavatory, shower, and floor drain;

(3) Cell Size. Cells shall contain not less than 80 clear square feet of floor space.

§259.732. *Infirmary.*

An infirmary shall be provided with the following features and equipment:

(1) nurses station;

(2) locked medication station with storage for individually filled prescriptions;

(3) utility room with sink and storage for linens and equipment;

- (4) refrigerated storage;
- (5) utility room with double tub sink and clinical service sink with flushing rim;
- (6) 80 square feet of floor space per bed;
- (7) doors, through which patients and equipment are to be moved, of adequate width to allow turning of wheeled chairs and tables normally used in medical facilities;
- (8) a lavatory with a goose neck inlet and wrist controls accessible to each ward;
- (9) janitor closet;
- (10) toilet, lavatory, and shower for use of inmates in the infirmary;
- (11) additional elements as dictated by the facility health care director.

§259.733. Multipurpose Rooms.

One or more multipurpose rooms having a minimum of 200 square feet of floor space each shall be provided for each increment of 100 inmates based on design capacity. These multipurpose rooms may be used for group assembly, conferences, contact visitation, counseling, religious services, education, or other special uses.

§259.734. Exercise Area.

One or more secure exercise areas shall be provided. Where outdoor exercise areas are provided, alternate areas shall be provided for exercise during inclement weather. Outdoor exercise areas should be covered with a security enclosure. Where outdoor exercise areas are not provided, facility design shall provide for access to sunlight. A toilet and drinking fountain shall be readily available. Exercise areas shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 1,000 square feet for each exercise area. Exercise areas serving multiple inmates housed in segregation shall provide 15 square feet per inmate for the maximum number of inmates expected to use the space at one time, but not less than 500 square feet for each exercise area. Individual recreation areas serving a single inmate in segregation shall provide no less than 200 square feet for each exercise area. Each direct supervision housing area shall have an exercise area within close proximity which should be adjacent to the housing area.

§259.735. Single Cells.

Single cells shall contain not less than 40 square feet of clear floor space. Each cell shall have one bunk, toilet, lavatory, table, and seat separate from the bunk. If electrical receptacles are provided, they shall be circuited with ground fault protection and the power individually controlled outside of the cell.

§259.736. Multiple Occupancy Cells.

Multiple occupancy cells shall contain two to eight bunks and not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each multiple occupancy cell shall have one toilet and lavatory. Multiple occupancy cells should not be provided in direct supervision facilities.

§259.737. Dormitories.

Dormitories shall contain 9 to 48 bunks. Dormitories shall contain not less than 40 square feet of clear floor space for the first bunk plus 18 square feet of clear floor space for each additional bunk. Each dormitory shall have adequate toilets, lavatories, and may include showers. Dormitories with contiguous day rooms in direct supervision facilities may exceed 40% of the facility capacity.

§259.738. Day Rooms.

All single cells, multiple occupancy cells, and dormitories shall be provided with contiguous or adjacent day rooms. Separation cells, violent cells, holding cells, detoxification cells, and medical cells are exempt from this requirement. Based on the design capacity of the cells served, the day rooms shall contain: not less than 40 square feet of clear floor space for the first inmate plus 18 square feet of clear floor space for each additional inmate; a sufficient number of toilets, lavatories, and showers as approved by the Commission, mirrors, seating, and tables. Seating and table for at least one inmate shall be provided in day rooms serving administrative segregation cells. A utility sink should be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the day room.

§259.739. Separation Cells.

Separation cells shall include the following features and equipment:

(1) Furnishings. Each cell shall be provided with one bunk, mirror, table, and seat separate from the bunk. A shelf and clothes hook may be provided. Convenient electrical receptacles circuited with ground fault protection shall be provided. Power to receptacles shall be individually controlled outside of the cell;

(2) Plumbing. Cells shall be provided with a toilet, lavatory, and shower;

(3) Cell Size. Cells shall contain not less than 80 square feet of clear floor space.

§259.740. Holding Cells.

(a) One or more holding cells shall be provided to hold inmates pending intake, release, and processing. An appropriate space shall be designated for staging inmates. Holding cells shall contain the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be 17" to 19" above the finished floor and not less than 12" wide. Seating shall be sufficient to provide not less than 24 linear inches per inmate at cell capacity;

(2) Plumbing. Cells shall be provided with adequate toilets, lavatories, and floor drains. The floor shall be properly pitched to drains;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of inmates to be confined at any one time. Cells shall be constructed to house from one to 24 inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.741. Detoxification Cells.

Any facility that anticipates the housing of intoxicated persons shall provide one or more detoxification cells for the detention of persons during the detoxification process. These cells shall include the following features and equipment:

(1) Seating. A stationary bench or benches abutting the walls shall be provided. Benches shall be not higher than 8" above the finished floor, not less than 2' 0" wide and shall extend the length of the cell;

(2) Plumbing. Cells shall be provided with one or more vandal resistive flushing floor drains with outside controls, or

detention type toilet and lavatory and vandal resistant floor drains. The floor shall be properly pitched to drains. Drinking fountains or lavatories capable of providing drinking water shall be provided;

(3) Cell Size. The size of the cell shall be determined by the anticipated maximum number of intoxicated inmates to be confined at any one time. Cells shall be constructed to house from one to eight inmates and shall contain not less than 40 square feet of floor space for one inmate and 18 square feet of floor space for each additional inmate to be confined;

(4) Surfaces. Floor, wall, and ceiling material shall be durable and easily cleaned;

(5) Supervision. The cell shall be located and constructed to facilitate supervision of the cell area and to materially reduce noise.

§259.742. Violent Cells.

A facility may contain one or more single occupancy cells for the temporary holding of violent persons. Violent cells shall include the following features and equipment:

(1) Furnishings. The cell shall be equipped with a hammock, not less than 2' 3" wide and 6' 3" long, made of an elastic or fibrous fabric. A bench abutting the wall, the length or width of the cell, at least 2' 3" wide and 6' 3" long and not more than 8" above the floor may be provided in lieu of a hammock;

(2) Plumbing. Flushing type floor drains with outside controls shall be provided;

(3) Cell Size. Cell shall contain not less than 40 square feet of clear floor space;

(4) Padding. Walls, floor, door and bench shall be completely covered with a material to protect the inmate from self injury. The type of material used to cover the walls, floor, and bench shall be fire resistive and nontoxic.

§259.743. Dimensions.

All cells and day rooms shall be not less than 8' 0" from finished floor to ceiling and 5' 6" from wall to wall. Cells containing over/under bunk units shall be measured from center line of units to wall. Corridors shall be not less than 6' 0" wide.

§259.744. Safety Vestibules.

Safety vestibules shall be provided for each inmate living area and day room used for confinement of three or more inmates with no more than three cells being served by one vestibule. All entrances to the security perimeter from administrative and/or public areas shall be provided with a safety vestibule.

(1) Safety vestibules shall have one or more interior doors and a main entrance door.

(2) Doors shall be arranged to be locked and unlocked by control means located outside of the inmate living area and safety vestibule.

(3) Where doors have an interlocking security feature, provisions shall be made for an override capability in the event an emergency requires both doors to be opened simultaneously.

§259.745. Furnishings for Inmate Housing Areas.

(a) Bunks. Bunks shall be fire resistive and securely anchored. The mattress surface of the bunk shall measure not less than 2' 3" wide and 6' 3" long.

(b) Toilets and Lavatories. Stainless steel detention type toilets and lavatories shall be provided in inmate occupied areas. In direct supervision living areas, they shall be constructed in such

manner and of such material so as to resist vandalism. Based on design capacity, each cell shall provide one toilet and lavatory capable of providing drinking water for each group or increment of eight inmates. Access to toilets and lavatories shall be provided in day rooms.

(c) Showers. Shower areas shall be not less than 2' 6" square per showerhead and not less than 7' 0" high. Construction shall be of vandal resistive materials and should be of materials which resist the action of soap and water. Drying areas of not less than 2' 6" square sloped to a drain should be provided adjoining the shower entrance. Based on design capacity, each separation cell and day room, unless otherwise approved by the Commission, shall provide one shower for each group or increment of 12 inmates.

(d) Tables and Seating. Tables and seating shall be constructed of materials which will resist vandalism. They shall be fire resistive, securely anchored, and reasonably remote from toilet areas. Tables and seating in direct supervision day rooms are not required to be anchored. Tables and benches shall be not less than 12" wide, and linear seating shall be not less than 18 continuous inches per person. Stools shall be not less than 12" in diameter. Seating height of 17" to 19" shall be provided.

(e) Privacy Shields. Inmate toilet and shower areas in dormitories, multiple occupancy cells, single occupancy cells, holding cells, and day rooms shall be configured or equipped to provide reasonable privacy from exposure to persons outside the cell. Privacy shields shall extend a minimum of 15" above the finished floor to 5' and shall be securely anchored.

(f) Mirrors. Mirrors shall be constructed of unbreakable material. Mirrors shall be provided above lavatories in day rooms and separation cells.

(g) Inmate Storage. Individual inmate storage shelving or trunks shall be constructed of fire resistive material and shall not impede the means of egress.

§259.746. Walls.

Walls should be constructed to resist vandalism and facilitate ease of maintenance. Exterior and interior walls within inmate housing and activity areas shall be constructed as follows:

(1) Exterior walls:

(A) a minimum 8 inch concrete block vertically reinforced by #3 bars 8 inches on center and all cells filled with 2,500 psi grout; or

(B) a minimum of 4 inch thick concrete plank reinforced with #4 bars 8 inches on center each way; or

(C) a minimum 3/16 inch thick steel plate.

(2) Interior walls:

(A) a minimum 6 inch concrete block vertically reinforced by #3 bars 8 inches on center and all cells filled with 2,500 psi grout; or

(B) a minimum 4 inch thick concrete plank reinforced with #4 bars 8 inches on center each way; or

(C) a minimum 3/16 inch thick steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for exterior and interior wall construction.

§259.747. Floors.

Floors should provide a high resistance to wear and moisture. A nonslip surface shall be provided at the entrance to all shower areas.

§259.748. Ceilings.

Ceilings within inmate housing areas shall be constructed of a minimum 4" thick concrete plank reinforced with #4 bars 8" on center each way or a minimum 10 gauge steel plate. Innovative design concepts are encouraged and comparable materials and methods approved by the Commission may be utilized for ceiling construction.

§259.749. Vermin Control.

Facility construction shall protect against the entrance and infestation of vermin. Materials and construction design shall contribute to efficient maintenance and housekeeping.

§259.750. Windows and Screens.

Operable windows shall be equipped with insect screens. The security level of windows in inmate occupied areas shall be commensurate with the security of the walls. Windows or skylights should be provided in inmate living and activity areas.

§259.751. Vent Grilles.

Vent grilles in walls and ceilings shall be commensurate with the security sought to be achieved. Vent grilles shall be securely anchored.

§259.752. Food Passes.

Food passes should not be less than 15 inches wide and 4 1/2 inches high. Lockable shutters should be provided to prevent passage of contraband.

§259.753. Detention Doors

Hollow metal doors shall be constructed of 12 to 14 gauge steel inside the security perimeter. 18 gauge hollow metal doors may be used outside the security perimeter. Plate doors shall be constructed of material not less than 3/16 inches thick. The security quality of each detention door shall be determined by the level of security sought to be achieved. Detention doors shall be equipped with detention hardware and accessories. All cell doors shall be not less than 28 inches in clear width and not less than 6 feet 8 inches high.

§259.754. Door Stops.

Door stops shall be provided for all detention doors and shall be placed to maintain a minimum of 6 inches between the leading edge of the door and the wall. Door closers manufactured with integral door stops may be used.

§259.755. Door Closers.

Door closers for all detention swinging doors shall be appropriate for the weight of the door.

§259.756. Keys and Locks

Keys and locks for detention doors shall be manufactured especially for detention use and keys shall be mogul or paracentric type. An additional set of keys shall be maintained by the operator.

§259.757. Key Cabinets.

Secured key cabinets should be provided at suitable locations.

§259.758. Power Operated Locks.

Power operated locks shall be motor, solenoid, or pneumatic type and provide electrical control unlocking, key unlocking by manual operation, and automatic mechanical deadlocking of doors upon closing. A door position switch and door position indicator shall be provided for all doors equipped with power operated locks. Heavy-

duty, detention type door closers should be provided on all swinging doors equipped with power operated locks.

§259.759. Remote Controls.

Doors to single cells, multiple occupancy cells, dormitories, and day rooms shall be capable of being locked and unlocked individually by control means located remote from the cell area. Single cells with contiguous day room and separation cells which open directly on an exiting corridor are exempt from this requirement. All remote door controls shall be secure.

§259.760. Emergency Operation of Doors.

All doors to cells and day rooms shall be capable of being unlocked by a manual means at the door or a remote location.

§259.761. Access Doors/Plumbing Chases.

All plumbing and mechanical access doors and panels shall be constructed and secured with locks or vandal resistive screws commensurate to the security sought to be achieved. Plumbing runs shall be a minimum 3' wide.

§259.762. Temperature Control.

Temperature levels shall be reasonably maintained between 65 degrees Fahrenheit and 85 degrees Fahrenheit in all occupied areas.

§259.763. Air Flow.

Ventilation shall be sufficient to admit fresh air and remove disagreeable odors. A sufficient number of windows capable of being opened, or a mechanical ventilation system provided with emergency electrical power, shall be provided in order to allow for sufficient ventilation in case of breakdown in the normal ventilation system or normal power failure.

§259.764. Plumbing.

Plumbing work shall meet the requirements of the International Plumbing Code, or equivalent. Warm and cold water shall be provided at all lavatories and warm water shall be provided at all showers. Lavatories in court holding cells are not required to provide warm water. Warm water temperature shall be between 100 and 120 degrees Fahrenheit. All plumbing in inmate occupied areas shall have quick shut off capability.

§259.765. Sinks.

Sufficient mop sinks with hot and cold water shall be provided within the security perimeter and administrative area.

§259.766. Faucets.

Cold water faucets with standard hose connections shall be provided in plumbing access space or corridors. Distance between hose connections shall not be more than 100 feet apart.

§259.767. Floor Drains.

Floor drains shall be located throughout the facility so as to reduce the possibility of flooding. Floor drains shall be provided in every area where toilets, lavatories, or showers are located. Floor drains may be provided in chases serving single and separation cells. Drain covers shall be provided and securely anchored with vandal resistive screws.

§259.768. Lighting.

Adequate illumination shall be provided throughout the cells and day rooms. An illumination level of 20 foot candles shall be provided at mirrors and tables. Master light controls for cells and day rooms and electrical conduit shall be out of reach of inmates.

should be capable of controlling some lighting; override capability shall be provided. Maximum security lighting shall be provided in inmate housing areas and detention type lighting provided within inmate occupied areas. Night lights sufficient to permit continuous observation shall be provided. Control areas and means of egress shall be continuously illuminated. Exteriors of buildings and all entrances shall be lighted sufficiently to observe approaching persons.

§259.769. Audible Communication.

Two-way voice communication shall be available at all times between inmates and corrections officers.

§259.770. Television Monitoring

Closed circuit television monitoring may be provided to supplement control and security functions. View of toilet and shower areas shall not be allowed except in medical and special observation areas.

§259.771. Electrical Power.

Electrical installation shall comply with state and local codes and ordinances. Facilities shall have adequate electrical receptacles in corridors or chases for food carts, janitorial, and maintenance equipment.

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

Filed with the Office of the Secretary of State, on October 12, 1998.

TRD-9815951

Jack E. Crump

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-5505



37 TAC §§259.732-259.773

(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 Commission on Jail Standards or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under Government Code, Chapter 511 which provides the Texas Commission on Jail Standards with the authority to adopt reasonable rules and procedures establishing minimum standards for the construction, equipment, maintenance and operation of county jails.

The Local Government Code, Chapter 351, §351.002 and §351.015 are affected by this proposal.

§259.732. *Medical Cells.*

§259.733. *Medical Ward.*

§259.734. *Infirmary.*

§259.735. *Multipurpose Rooms.*

§259.736. *Exercise Area.*

§259.737. *Single Cells.*

§259.738. *Multiple Occupancy Cells.*

§259.739. *Dormitories.*

§259.740. *Day Rooms.*

§259.741. *Separation Cells.*

§259.742. *Holding Cells.*

§259.743. *Detoxification Cells.*

§259.744. *Violent Cells.*

§259.745. *Dimensions.*

§259.746. *Safety Vestibules.*

§259.747. *Furnishings for Inmate Housing Areas.*

§259.748. *Walls.*

§259.749. *Floors.*

§259.750. *Ceilings.*

§259.751. *Vermin Control.*

§259.752. *Windows and Screens.*

§259.753. *Vent Grilles.*

§259.754. *Food Passes.*

§259.755. *Detention Doors.*

§259.756. *Door Stops.*

§259.757. *Door Closers.*

§259.758. *Keys and Locks.*

§259.759. *Key Cabinets.*

§259.760. *Power Operated Locks.*

§259.761. *Remote Controls.*

§259.762. *Emergency Operation of Doors.*

§259.763. *Access Doors.*

§259.764. *Temperature Control*

§259.765. *Air Flow.*

§259.766. *Plumbing.*

§259.767. *Sinks.*

§259.768. *Faucets.*

§259.769. *Floor Drains.*

§259.770. *Lighting.*

§259.771. *Audible Communication.*

§259.772. *Television Monitoring.*

§259.773. *Electrical Power.*

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 October 12, 1998.

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Jack E. Crump

Executive Director

Texas Commission on Jail Standards

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-5505



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 48. Community Care for Aged and Disabled

Subchapter B. Transition to Life in the Community Program

40 TAC §§48.2001-48.2005

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

The Texas Department of Human Services (DHS) proposes the repeal of §§48.2001-48.2005, concerning Definitions, Client Eligibility Criteria, Application, Program Benefits, and Civil Rights, in its Community Care for Aged and Disabled chapter. The purpose of the repeals is to delete the rules for Transition to Life in the Community Program because the program has not been in effect since 1993. Thus the rules are obsolete and serve no useful purpose.

Eric M. Bost, commissioner, has determined that for the first five-year period the repeals are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the repeals.

Mr. Bost also has determined that for each year of the first five years the repeals are in effect the public benefit is that the rule base will be free of obsolete information. There will be no effect on small businesses because the program is no longer in effect and was not connected to small businesses at the time of its existence. There is no anticipated economic cost to persons who are required to comply with the proposed repeals.

Questions about the content of this proposal may be directed to Debbie Berliner at (512) 438-3199 in DHS's Community Care for Aged and Disabled section. Written comments on the proposal may be submitted to Supervisor, Rules and Handbooks Unit-018, Texas Department of Human Services E-205, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register*.

The repeals are proposed under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The repeals implement the Human Resources Code, §§22.001-22.030.

§48.2001. *Definitions.*

§48.2002. *Client Eligibility Criteria.*

§48.2003. *Application.*

§48.2004. *Program Benefits.*

§48.2005. *Client Rights.*

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 October 8, 1998.

TRD-9815801

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Proposed date of adoption: January 1, 1999

For further information, please call: (512) 438-3765



Part XX. Texas Workforce Commission

Chapter 800. General Administration

Subchapter B. Allocations and Funding

40 TAC §800.56

The Texas Workforce Commission (the Commission) proposes amendments to §800.56, concerning allocation of child care funds to local workforce development areas (workforce areas).

The purpose of the amendments is to allow local workforce development boards (Boards) to have more flexibility in the use of funds at the local level. It is the Commission's intent to allocate funds to workforce areas for the purpose of meeting and exceeding statewide performance measures as set forth in the state's General Appropriations Act.

The amendments set forth the provisions for budgeting and expending funds for the different types of child care clients to the extent permitted by statutory and regulatory provisions related to the funding sources.

The Commission is committed, when possible, to allocating an amount of funds available for workforce training and services greater than the minimum level set by law.

The specific amount of funds available for allocation to workforce areas will be determined during the Commission's budgetary process. The amendments are designed to be responsive to the needs of workforce areas, changes in state and federal laws and regulations, and issues that may arise in the further management of workforce training and services by the Commission through the Boards.

The proposed rule amendments specify the method the Commission will employ in carrying out the allocation of funds to the workforce areas and the use of those funds for certain child care. The child care services are provided under Texas Human Resources Code Chapter 44.

Another purpose of the amendments is to utilize the federal poverty level indicators instead of the state median income levels as the mechanism for targeting At-Risk children for child care services in areas of desperate need.

The language in §800.56(c) and (f) is changed from "75% of the state median income" to "150% of the federal poverty guidelines."

The "federal poverty guidelines" are formally referenced as "the poverty guidelines updated annually in the *Federal Register* by the U.S. Department of Health and Human Services under authority of §673(2) of the Omnibus Budget Reconciliation Act of 1981."

The "state median income" is published in the 1990 US Census Data, which contains the 1989 median family income data.

The use of the 75% of the state median income level instead of 150% of the federal poverty guidelines to determine allocations to local workforce development areas results in a shifting of funds away from areas of the state that have substantial numbers of children living below or near the poverty level. Use of the state median income level instead of the federal poverty guidelines could result in parents leaving employment to care for children or having to leave their children in unsafe situations, such as unsupervised care, in order to maintain employment.

If a Board fails to comply with the provisions contained in the rule, the Board shall be subject to the sanctions as detailed in Texas Administrative Code, Title 40, Chapter 800, Subchapter E. Sanctions.

The Commission has scheduled a public hearing on the proposed rule for 1:30 PM. on November 20, 1998 in Room 644 of the TWC Building at 101 East 15th Street in Austin, Texas.

Randy Townsend, Director of Finance, has determined that for each year of the first five years the amendments will be in effect the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rule;

There are no estimated reductions in costs to the state and to local governments as a result of enforcing or administering the rule;

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rule;

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rule; and

There are no anticipated economic costs to persons required to comply with the rule.

Sandra Smith, Acting Director of Child Care/Work and Family Clearinghouse, has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be to help ensure a more effective use of child care funds to assist Boards in supporting employment, training, and education.

Mr. Townsend has also determined that there is no anticipated adverse impact on small businesses as a result of enforcing or administering the rule because small businesses are not regulated by or required to do anything by this rule.

Comments on the proposal may be submitted to Sandra Smith, Acting Director of Child Care/Work and Family Clearinghouse, Texas Workforce Commission Building, 101 East 15th Street, Room 526BT, Austin, Texas 78778, (512) 463-2692. Comments may also be submitted via fax to (512) 463-2220 or e-mailed to: Sandra.Smith@twc.state.tx.us. Comments must be received by the Commission within 30 days from the date of the publication in the *Texas Register*.

The amendments are proposed under Texas Labor Code, Title 4, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems

necessary for the effective administration of the Commission programs.

The amendments affect Texas Labor Code, Chapter 302, particularly §302.002, and Texas Human Resources Code, Chapters 31 and 44.

§800.56. *Child Care Services.*

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

(c) For At-Risk child care, funds will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [75% of the state median income] residing within the workforce area to the statewide total number of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [75% of the state median income], and

(2) an adjustment for average net unit rates for At-Risk child care.

(d) For Food Stamp Employment and Training child care, funds allocated for Food Stamps Employment and Training child care shall only be used for Food Stamp Employment & Training clients, and will be allocated among workforce areas on the basis of:

(1) the relative proportion of the total number of children aged 6-12 years in households of mandatory food stamp work registrants residing within the workforce area to the statewide total number of children aged 6-12 years in households of mandatory food stamp work registrants, and

(2) an adjustment for average net unit rates for Food Stamp Employment and Training child care.

(e) (No change.)

(f) For locally matched initiatives for child care and quality improvements, funds will be allocated among workforce areas on the basis of the relative proportion of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [75% of the state median income] residing within the workforce area to the statewide total of children aged 0-12 years in families at or below 150% of the federal poverty guidelines [75% of the state median income].

(g)-(j) (No change.)

(k) The funds allocated in subsections (b), (c), (e), and (g)-(j) of this section may be budgeted for and expended on child care services and management expenses at the Board's discretion provided that the following requirements are met.

(1) The Boards shall use no more than 5% of the total expenditure of the funds referenced in subsection (k) of this section for administrative costs as defined in federal regulations contained in 45 Federal Register 39989, §98.52 and as may be amended.

(2) The Boards shall use at least 4% of the total expenditure of the funds referenced in subsection (k) of this section for activities to improve the quality of child care as defined in federal regulations contained in 45 Federal Register 39989 and as may be amended. At the Board's discretion, more than 4% of the expenditures may be for these activities.

(3) Transitional clients who are eligible for child care for their children and Choices clients who are eligible for child care for their children shall be served on a priority basis, to enable parents to participate in work, education, or training activities.

(4) The Board shall comply with all terms and additional requirements for specific expenditures that may be contained in the Board contract.

(5) The Boards shall use all funds allocated in subsections (b), (c), (e), and (g)-(h) of this section for direct care services, including quality improvements. If there is a desire to transfer funds from these allocations for operational or administrative costs, the Board may only make such a transfer if there is a proportionate increase of the number of children receiving child care services as a result of the transfer.

(6) The Board shall advise the Commission in writing within 30 days of any transfer of allocations of funds as a result of provisions in this section.

(l) Additional funds, as allocated in subsection (f) of this section, are available for use if they are matched by local funds. Both the state allocation of federal funds and the local funds are subject to the provisions in paragraphs (1)-(4) of subsection (k) of

this section. The local match may be in the form of cash donations or, for donations from public entities, certification of the public entity's expenditures. The rate of required match changes annually through federal regulations and will be specified in the Board contract.

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 October 9, 1998.

TRD-9815896

J. Ferris Duhon

Assistant General Counsel

Texas Workforce Commission

Earliest possible date of adoption: November 22, 1998

For further information, please call: (512) 463-8812

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WITHDRAWN RULES

An agency may withdraw a proposed action or the remaining effectiveness of an emergency action by filing a notice of withdrawal with the *Texas Register*. The notice is effective immediately upon filing 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 4. AGRICULTURE

Part II. Texas Animal Health Commission

Chapter 35. Brucellosis

Subchapter A. Eradication of Brucellosis in Cattle 4 TAC §35.6

Pursuant to Texas Government Code, §2001.027 and 1 TAC § 91.65(c)(2), the proposed amended section, submitted by the Texas Animal Health Commission has been automatically withdrawn. The amended section as proposed appeared in the January 30, 1998, issue of the *Texas Register* (23 TexReg 692).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816371



TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 23. Substantive Rules

Certification

16 TAC §23.39

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Public Utility Commission of Texas has been automatically withdrawn. The new section as proposed appeared in the December 5, 1997, issue of the *Texas Register* (22 TexReg 11901).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816369



TITLE 19. EDUCATION

Part VII. State Board for Educator Certification

Chapter 230. Professional Educator Preparation and Certification

Subchapter V. Continuing Education

19 TAC §230.610, §230.611

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed repealed sections, submitted by the State Board for Educator Certification have been automatically withdrawn. The repealed sections as proposed appeared in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11631).

Filed with the Secretary of State on October 19, 1998.

TRD-9816367



TITLE 22. EXAMINING BOARDS

Part V. State Board of Dental Examiners

Chapter 109. Conduct

Subchapter L. Anesthesia and Anesthetic Agents

22 TAC §109.172

The State Board of Dental Examiners has withdrawn from consideration for permanent adoption the proposed amendment to §109.172, which appeared in the September 4, 1998, issue of the *Texas Register* (23 TexReg 8971).

Filed with the Office of the Secretary of State on October 7, 1998.

TRD-9815684

Douglas A. Beran, Ph.D.

Executive Director

State Board of Dental Examiners

Effective date: October 7, 1998

For further information, please call: (512) 463-6400



Part XXV. Structural Pest Control Board

Chapter 595. Compliance and Enforcement

22 TAC §595.16

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Structural Pest Control Board has been automatically withdrawn. The new section as proposed appeared in the January 23, 1998, issue of the *Texas Register* (23 TexReg 491).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816370

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TITLE 25. HEALTH SERVICES

Part I. Texas Department of Health

Chapter 157. Emergency Medical Services

Emergency Medical Services Trauma Systems

25 TAC §157.131

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed new section, submitted by the Texas Department of Health has been automatically withdrawn. The new section as proposed appeared in the December 12, 1997, issue of the *Texas Register* (22 TexReg 12215).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816368

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TITLE 28. INSURANCE

Part II. Texas Workers' Compensation Commission

Chapter 164. Extra Hazardous Employer Program

28 TAC §§164.1–164.8, 164.10–164.12, 164.14–164.17

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended and new sections, sub-

mitted by the Texas Workers' Compensation Commission have been automatically withdrawn. The amended and new sections as proposed appeared in the November 28, 1997, issue of the *Texas Register* (22 TexReg 11638).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816373

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part V. Texas Board of Pardons and Paroles

Chapter 143. Executive Clemency

Commutation of Sentence

37 TAC §143.57

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.65(c)(2), the proposed amended section, submitted by the Texas Board of Pardons and Paroles has been automatically withdrawn. The amended section as proposed appeared in the December 19, 1997, issue of the *Texas Register* (22 TexReg 12441).

Filed with the Office of the Secretary of State on October 19, 1998.

TRD-9816372

ADOPTED RULES

An agency may take final action on a section 30 days after a proposal has been published in the *Texas Register*. The section becomes effective 20 days after the agency files the correct document with the *Texas Register*, unless a later date is specified or unless a federal statute or regulation requires implementation of the action on shorter notice.

If an agency adopts the section without any changes to the proposed text, only the preamble of the notice and statement of legal authority will be published. If an agency adopts the section with changes to the proposed text, the proposal will be republished with the changes.

TITLE 1. ADMINISTRATION

Part VII. State Office of Administrative Hearings

Chapter 163. Arbitration Procedures for Certain Enforcement Actions of the Department of Human Resources

1 TAC §§163, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, 163.67

The State Office of Administrative Hearings (SOAH) adopts amendments to §§163.3, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, and 163.67, concerning arbitration procedures which may be elected for certain enforcement actions prosecuted by the Department of Human Services, without changes to the proposed text as published in the August 7, 1998, issue of the *Texas Register* (23 TexReg 8009), and will not be republished. SOAH adopts these amendments to provide for the efficient and effective operation of this program, implementing practical lessons learned since the original adoption and subsequent use of the rules, and in order to bring the rules into conformity with legislative amendments adopted last session. These adopted amendments describe types of cases excluded from the arbitration process by legislative amendments, articulate some additional requirements regarding who may be appointed as an arbitrator and give the chief judge some additional flexibility to certify individuals as qualified to serve as arbitrators based on individualized training and program need, allocate responsibility for costs of the proceedings in accord with legislative amendments, provide for recordings of prehearing conferences to be made at the arbitrator's request, provide that discovery requests should only be filed at SOAH if there is a related dispute, provide for the closing of the hearing with the filing of any briefs requested by the arbitrator, and provide for limited appeal by the department in accord with legislative amendments.

No comments were received regarding the proposed rules.

The amendments are adopted under Health and Safety Code, Subchapter H, Chapter 242, §242.253, which requires that the State Office of Administrative Hearings adopt rules governing the appointment of an arbitrator and the process of arbitration under that chapter; and under Government Code, Chapter 2001, §2001.004 which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures.

Code sections affected by these amendments are Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32, §32.021(k).

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 October 9, 1998.

TRD-9815911

Amalija J. Hodgins

Deputy Chief Administrative Law Judge

State Office of Administrative Hearings

Effective date: October 29, 1998

Proposal publication date: August 7, 1998

For further information, please call: (512) 475-4931

TITLE 16. ECONOMIC REGULATION

Part II. Public Utility Commission of Texas

Chapter 22. Practice and Procedure

Subchapter K. Hearings

16 TAC §22.202

The Public Utility Commission of Texas adopts an amendment to §22.202 relating to Presiding Officer, without changes to the proposed text as published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7323) and will not be republished. The proposed amendment clarifies that subsection (e) applies to administrative law judges with the State Office of Administrative Hearings (SOAH). Project Number 17709 has been assigned to this proceeding.

The Appropriations Act of 1997, House Bill 1, Article IX, §167 (Section 167) requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to Government Code, Chapter 2001. Such reviews shall include, at a minimum, an assessment by the agency as to whether the reason for adopting or readopting the rule continues to exist.

The commission had invited specific comments regarding the §167 requirement, as to whether the reason for adopting the rule continues to exist, in the comments on the proposed

amendment. No interested persons commented on the §167 requirement or on the proposed amendment. The commission finds that the reason for adopting this section continues to exist.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) (PURA) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Index to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

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 Public Utility Commission of Texas, 1998.

TRD-9815657

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Effective date: October 27, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 936-7308

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TITLE 22. EXAMINING BOARDS

Part XXI. Texas State Board of Examiners of Psychologists

Chapter 461. General Rulings

22 TAC §461.7

The Texas State Board of Examiners of Psychologists adopts an amendment to §461.7, concerning License Statuses, without changes to the proposed text as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8627).

The rule is being amended to reflect that the Board may sanction a license that is on delinquent status and that a licensee must comply with the continuing education requirements before being allowed to retire a license and to clarify that "nonpayment" status is synonymous with "void" status.

The amendment will ensure that all licensees obtain mandatory continuing education credits each year that they hold a license and to reconcile the differences between classifications of license status in the Board's rules and the Board's computer system.

No comments were received regarding the adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, 4512c, which provide the Texas State Board of Examiners of Psychologists with the authority to promulgate rules consistent with the Statute.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815888

Sherry L. Lee

Executive Director

Texas Board of Examiners of Psychologists

Effective date: October 29, 1998

Proposal publication date: August 21, 1998

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

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Part XXIV. Texas Board of Veterinary Medical Examiners

Chapter 573. Rules of Professional Conduct

Subchapter G. Other Provisions

22 TAC §573.64

The Texas Board of Veterinary Medical Examiners adopts amendments to §573.64 concerning Continuing Education Requirements without changes to the proposed text published in the July 17, 1998 issue of the *Texas Register* (23 TexReg 7323).

The agency is adopting amendments to this section to clarify that licensees on inactive status are exempt from obtaining continuing education as long as they remain in that status. Subsection (a)(3) adds the requirement that requests for hardship extensions must be received in the Board office by December 15th in order to establish a date certain and allow sufficient time for agency approval. Subsection (f) clarifies that the licensee is subject to disciplinary action for failure to complete the required CE hours without obtaining a hardship extension.

No written comments were received.

The section is adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, Section 7(a) which provides that the Board may enact or amend rules which are necessary to carry into effect the provisions of the Veterinary Licensing Act.

The amendments affect the Veterinary Licensing Act, Article 8890, Section 13(g) which requires the Board to establish a minimum number of hours of continuing education required to renew a license.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815540

Ron Allen

Executive Director

Texas Board of Veterinary Medical Examiners

Effective date: October 25, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 305-7555

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Chapter 577. General Administrative Duties

Subchapter B. Staff and Miscellaneous

22 TAC §577.15

The Texas Board of Veterinary Medical Examiners adopts amendments to §577.15 concerning Fee Schedules without changes to the proposed text published in the July 3, 1998 issue of the *Texas Register* (23 TexReg 6831).

The agency is adopting amendments to this section to lower the license renewal fee by \$4.00 since the anticipated license renewal income for fiscal year 1998 exceeded original projections.

No written comments were received.

The section is adopted under the authority of the Veterinary Licensing Act, Texas Civil Statutes, Article 8890, §7(a) which provides that the Board may enact or amend rules which are necessary to carry into effect the provisions of the Veterinary Licensing Act.

The amendments affect the Veterinary Licensing Act, Article 8890, Section 19(b) which requires the Board to set and adjust total fees collected to ensure that the fees are sufficient to cover the costs of administering the Veterinary Licensing 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 October 5, 1998.

TRD-9815541

Ron Allen

Executive Director

Texas Board of Veterinary Medical Examiners

Effective date: October 25, 1998

Proposal publication date: July 3, 1998

For further information, please call: (512) 305-7555



Part XXIX. Texas Board of Professional Land Surveying

Chapter 661. General Rules of Procedures and Practices

The Texas Board of Professional Land Surveying adopts amendments to §§661.42, 661.73, 661.83 and 661.86, concerning applications, examinations, and licensing and contested case without changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9246) and will not be republished.

The amendment to §661.42 clarifies the fact that examination fees will reflect the actual cost of examination. In §661.73, §661.83 and §661.86, language has been changed for consistency with the Administrative Procedure Act.

No comments were received regarding adoption of the amendments.

Subchapter D. Applications, Examinations, and Licensing

22 TAC §661.42

The amendment is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 1998.

TRD-9815916

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: November 1, 1998

Proposal publication date: September 11, 1998

For further information, please call: (512) 452-9427



Subchapter E. Contested Case

22 TAC §§661.73, 661.83, 661.86

The amendments are adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 1998.

TRD-9815917

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: November 1, 1998

Proposal publication date: September 11, 1998

For further information, please call: (512) 452-9427



22 TAC §661.74

The Texas Board of Professional Land Surveying adopts the repeal of §661.74, concerning contested case without changes to the proposed text as published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9247) and will not be republished.

The section is repealed to eliminate a duplicate rule.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 5282c, §9, which provides the Texas Board of Professional Land Surveying with the authority to make and enforce all reasonable and necessary rules, regulations and bylaws not inconsistent with the Texas Constitution, the laws of this state, and this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 12, 1998.

TRD-9815918

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Effective date: November 1, 1998

Proposal publication date: September 11, 1998

For further information, please call: (512) 452-9427

TITLE 30. ENVIRONMENTAL QUALITY

Part I. Texas Natural Resource and Conservation Commission

Chapter 113. Control of Air Pollution From Toxic Materials

Subchapter C. National Emission Standards for Hazardous Air Pollutants for Source Categories (FCAA §112, 40 CFR 63)

The commission adopts amendments to §§113.100, 113.110, 113.120, 113.130, 113.140, 113.190, 113.220, 113.230, 113.250, 113.290, 113.360, and 113.380, and new §§113.260, 113.350, 113.400, 113.420, and 113.670, concerning National Emission Standards for Hazardous Air Pollutants (NESHAP) for Source Categories. These rules are adopted without changes to the proposed text as published in the July 17, 1998, issue of the *Texas Register* (23 TexReg 7355).

The amendments incorporate changes that the United States Environmental Protection Agency (EPA) has made to Maximum Achievable Control Technology (MACT) standards by updating the federal promulgation dates cited in the commission rules that were previously adopted by reference. Sections 113.100, 113.110, 113.120, 113.130, 113.140, 113.230, 113.250, and 113.290 were adopted by the commission on June 25, 1997. Section 113.190 and §113.380 were adopted by the commission on October 15, 1997. In addition, the amendments correct the federal promulgation dates for §113.220 and §113.360, which contained incorrect dates as adopted.

The new sections concern requirements that are contained in 40 Code of Federal Regulations (CFR) Part 63. EPA is developing these national standards to regulate emissions of hazardous air pollutants under the Federal Clean Air Act (FCAA) Amendments, §112. These NESHAPs for source categories are technology-based standards and are commonly referred to as MACT Standards.

EXPLANATION OF ADOPTED RULES The commission adopts by reference, without changes, five of the federal MACT Standards. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards. With delegation, the commission will be

responsible for administration and enforcement of the MACT requirements.

These five federal rules, each of which are under their own division of the same name, are Group I Polymers and Resins, 40 CFR 63, Subpart U; Offsite Waste and Recovery Operations, 40 CFR 63, Subpart DD; Shipbuilding and Ship Repair (Surface Coating), 40 CFR 63, Subpart II; Printing and Publishing, 40 CFR 63, Subpart KK; and Group IV Polymers and Resins, 40 CFR 63, Subpart JJJ. As other MACT standards continue to be promulgated, they will be reviewed for compatibility with current state regulations and policies. The commission will then incorporate them into Chapter 113 through formal rulemaking procedures. The commission will then seek formal delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed this rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a major environmental rule as defined in the Code. This rulemaking does not establish any new requirements beyond those already established by federal law. Affected sources are required to comply with these federal standards whether or not the commission adopts them.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for this rulemaking pursuant to Texas Government Code, §2007.043. The following is a summary of that assessment. The specific purpose of this rulemaking is to facilitate implementation and enforcement of the MACT standards by the state. This rulemaking will not create any additional burden on private real property. Under federal law, the affected industries will be required to implement these MACT standards regardless of whether the commission or EPA is the agency responsible for implementation of the standards.

COASTAL MANAGEMENT PLAN The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resource Code, §33.201 et seq.), and the commission's rules in 30 TAC Chapter 281, Subchapter B, concerning Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and has determined that this action is consistent with the applicable CMP goals and policies. The CMP policy applicable to this rulemaking action is the policy that commission rules comply with regulations at 40 CFR, to protect and enhance air quality in the coastal area, (31 TAC §501.14(q)). This rulemaking will adopt by reference, without changes, federal MACT standards contained in 40 CFR Part 63, and is therefore consistent with this policy.

PUBLIC HEARING A public hearing was held in Austin on August 13, 1998. No oral comments were received at this hearing. No written comments were received during the comment period, which closed August 17, 1998.

Division 1. General Provisions

30 TAC §113.100

STATUTORY AUTHORITY The amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. These amendments and new rules are being adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815833

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 2. Hazardous Organic NESHAP

30 TAC §§113.110, 113.120, 113.130, 113.140

STATUTORY AUTHORITY These amendments are adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. These amendments are adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815832

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 4. Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks

30 TAC §113.190

STATUTORY AUTHORITY

This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815831

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 6. Industrial Process Cooling Towers

30 TAC §113.220

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815830

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 7. Gasoline Distribution Facilities

30 TAC §113.230

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815829

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 8. Halogenated Solvent Cleaning

30 TAC §113.250

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on October 9, 1998.

TRD-9815828

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Effective date: October 29, 1998

Proposal publication date: July 17, 1998

For further information, please call: (512) 239-1970



Division 9. Group 1 Polymers and Resins

30 TAC §113.260

STATUTORY AUTHORITY This new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Division 11. Secondary Lead Smelting

30 TAC §113.290

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 14. Offsite Waste and Recovery Operations

30 TAC §113.350

STATUTORY AUTHORITY This new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 15. Magnetic Tape Manufacturing Operations

30 TAC §113.360

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 16. Aerospace Manufacturing and Re-work Facilities

30 TAC §113.380

STATUTORY AUTHORITY This amendment is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from the EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 17. Shipbuilding and Ship Repair (Surface Coating)

30 TAC §113.400

STATUTORY AUTHORITY This new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 18. Printing and Publishing

30 TAC §113.420

STATUTORY AUTHORITY This new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Division 19. Group IV Polymers and Resins

30 TAC §113.670

STATUTORY AUTHORITY This new rule is adopted under the Texas Health and Safety Code, the Texas Clean Air Act (TCAA), §382.011, which provides the commission the authority to establish the level of quality to be maintained in the state's air; §382.012, which provides for the commission to prepare and develop a general, comprehensive plan for the proper control of the state's air; §382.016, concerning monitoring requirements and examination of records; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA. This amendment is adopted to obtain delegation from EPA under 40 CFR 63, Subpart E, which implements the FCAA Amendments, §112(l).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Designated Facilities and Pollutants

30 TAC §§113.2060, 113.2061, 113.2067, 113.2069

The Texas Natural Resource Conservation Commission (commission) adopts new Subchapter D, concerning Designated Facilities and Pollutants, and new §§113.2060, 113.2061, 113.2067, and 113.2069, concerning Municipal Solid Waste (MSW) Landfills. Sections 113.2061, 113.2067, and 113.2069 are adopted with changes to the proposed text as published in the May 8, 1998, issue of the *Texas Register* (23 TexReg 4523-4526). Section 113.2060 is adopted without changes to the proposed text and will not be republished. The commission also adopts emission standards for non-methane organic compounds (NMOC) and control plan requirements to the Texas Air Control Board Plan for the Control of Sulfuric Acid Mist, Total Reduced Sulfur, and Fluoride Emissions from Existing Facilities. This plan is renamed to the Texas State Plan for the Control of Designated Facilities and Pollutants. The adopted new sections and state plan revisions are based on emission guidelines published by the United States Environmental Protection Agency (EPA) on March 12, 1996, and amended on August 17, 1998, under the authority of §111(d) of the Federal Clean Air Act (FCAA). A copy of the emission guidelines is available either through EPA or through the commission. EPA went through litigation with the National Solid Waste Management Association after adoption of the federal MSW landfill rules. A litigation agreement was reached in November 1997, and signed during the week of March 16, 1998, and the amendment date has been added to the rule language.

Title 40 Code of Federal Regulations (CFR) Part 60, §60.23(a) requires that within nine months after notice of the availability of a final emission guideline document is published for a designated facility, as defined in 40 CFR Part 60, §60.21(b), each state must adopt and submit to EPA a plan for the control of the designated pollutant to which the emission guideline document applies. The executive director requested and received a one-year extension to this requirement, until December 31, 1997, in order to fully address concerns regarding the regulation by this rule of closed landfills. On December 9, 1997, EPA also extended the deadline for Texas to submit a rule under §111(d) until July 31, 1998.

EXPLANATION OF ADOPTED RULES New §113.2060, concerning Definitions, defines terms used in the new subchapter that are either previously undefined or are used differently by the federal rule that is the basis for the proposed rule. Definitions for the terms "construction" and "modification" were taken from 40 CFR Part 60, §60.2, concerning Definitions. Definitions for the terms "reconstruction" and "fixed capital cost," were taken from 40 CFR Part 60, §60.15, concerning Reconstruction. The definition for the term "existing municipal solid waste landfill" was taken from 40 CFR Part 60, §60.33(c), concerning Emission Guidelines for Municipal Solid Waste Landfills with additional clarifications. The definitions for "modification," "reconstruction" and "existing municipal solid waste landfill" were augmented with language from 40 CFR Part 60, §60.32(c), concerning Designated Facilities, to make the definitions specific to this rule.

The definition of "existing municipal solid waste landfill" was further modified with regard to the closed landfills that will be affected by the rules. EPA defined existing municipal solid waste landfill as any that has accepted waste at any time since November 8, 1987. The commission has determined that MSW landfills which closed prior to October 9, 1993, did so because those facilities were economically unable to comply with 40 CFR Part 258 (popularly known as the "Subtitle D" requirements).

Requiring these facilities to comply with new standards more than five years after they closed for economic reasons would be unreasonable. The MSW landfills that were closed prior to October 9, 1993, have been excluded from this rule requirement in accordance with 40 CFR §60.24(f), which allows the state rule to be less stringent for a particular designated class of facilities provided that the state can show that factors exist specific to the class of facilities that make application of a less stringent standard significantly more reasonable.

New §113.2061, concerning Standards for Air Emissions, provides the air quality standards for existing MSW landfills. Section 113.2061(a) requires that owners or operators of an existing MSW landfill comply with the provisions of the New Source Performance Standard for MSW landfills. This is consistent with federal requirements (40 CFR Part 60, §60.24(c)), which specify that the emission standards be no less stringent than the corresponding emission guidelines. The emission guidelines require existing landfills with a design capacity greater than or equal to 2.5 million (M) megagrams (Mg) (approximately 2.75 M tons) and 2.5 M cubic meters to annually calculate estimated NMOC emissions from the landfill. When the estimated annual NMOC emission rate reaches 50 Mg per year, the landfill owner or operator must install a gas collection system and route the gas to a control device for example a flare, an energy recovery device such as a gas turbine or internal combustion engine), or a gas recovery system. Once the gas collection system is operating, the owner or operator must monitor the landfill surface quarterly for methane leaks.

New §113.2061(b) provides that gas collection and control systems that were approved by the commission for installation at a landfill in compliance with 30 TAC §§115.152-115.159, concerning Municipal Solid Waste Landfills, are in compliance with the design standards with no further review. This provision is included to prevent landfill owners/operators in the Dallas/Fort Worth and El Paso ozone nonattainment areas from being subjected to the requirements of two different state rules.

New §113.2067, concerning Exemptions, provides the criteria by which operators of an MSW landfill or class of landfills may apply for an exemption to the proposed rule on a case-by-case basis. These criteria are consistent with the federal regulations (40 CFR Part 60, §60.24(f)), which list the criteria under which exemptions will be considered by EPA.

New §113.2069, concerning Compliance Schedule, provides the schedule for the initial reports that are required by the rule. Owners and operators of all affected landfills must file an initial design capacity report within 90 days of the date that the commission publishes notification in the *Texas Register* that EPA has approved this rule. By the same date, owners and operators of those affected landfills with a design capacity greater than or equal to 2.5 M Mg and 2.5 M cubic meters must file an initial NMOC emission rate report. All other compliance times are specified in the referenced federal rule relative to the filing deadline for these two reports.

FINAL REGULATORY IMPACT ANALYSIS The commission has reviewed these sections as required by regulatory analysis provisions of Texas Government Code (the Code), §2001.0225, and has determined that the rulemaking is not subject to §2001.0225. While this action is a major environmental rule which will cause estimated expenditures of up to \$12,000 per acre for affected landfills it does not meet any of the applicability requirements of §2001.0225(a).

This adoption does not exceed a standard of federal law and is specifically required by federal law. 40 CFR Part 60, §60.23(a) requires that states adopt plans for the control of emissions for which EPA has published emission guidelines. There is no delegation agreement between the state and a federal agency concerning this adoption. These rules are adopted under the specific rulemaking authority of §382.011 and §382.012 of the Texas Clean Air Act (TCAA), Texas Health and Safety Code.

TAKINGS IMPACT ASSESSMENT The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated, §2007.043. The following is a summary of that assessment. The specific purpose of the rules is to control air contaminants from MSW landfills. The new §113.2061, concerning Standards for Air Emissions, provides the air quality standards with which existing MSW landfills must comply. The new §113.2061(a) requires that owners or operators of an existing MSW landfill comply with the provisions of the New Source Performance Standard for MSW landfills. This is consistent with federal requirements (40 CFR Part 60, §60.24(c)), which specify that the emission standards be no less stringent than the corresponding emission guidelines. The emission guidelines require existing landfills with a design capacity greater than or equal to 2.5 million (M) megagrams (Mg) (approximately 2.75 M tons) and 2.5 M cubic meters to annually calculate estimated NMOC emissions from the landfill. When the estimated annual NMOC emission rate reaches 50 Mg per year, the landfill owner or operator must install a gas collection system and route the gas to a control device (e.g., a flare), an energy recovery device (e.g., a gas turbine or internal combustion engine), or a gas recovery system. Once the gas collection system is operating, the owner or operator must monitor the landfill surface quarterly for organic compound leaks. The commission estimates the cost of compliance with the new rule as \$12,000 per acre, and this could place a burden on private, real property.

Pursuant to §2007.003(b)(4) and (b)(13), Texas Government Code (the Code), Chapter 2007 does not apply to this action. Under §2007.003(b)(4), Chapter 2007 does not apply to an action of a political subdivision that is reasonably taken to fulfill an obligation mandated by federal law. Section 2007.003(b)(13) states that Chapter 2007 does not apply to an action that: (1) is taken in response to a real and substantial threat to public health and safety; (2) is designed to significantly advance the health and safety purpose; and (3) does not impose a greater burden than is necessary to achieve the health and safety purpose.

40 CFR Part 60, §60.23(a), requires states to adopt emission guidelines for MSW landfills. Therefore, Chapter 2007, Texas Government Code does not apply to the commission adoption of the emission guidelines because this action: (1) is in response to the federal mandate in § 60.23; (2) is in response to a real and substantial threat to public health and safety; (3) advances the public health and safety purpose by reducing emissions of NMOC and sulfur compounds which are sources of harmful emissions, odor nuisances, and fire or explosion hazards; and (4) does not impose a greater burden than is necessary to achieve the health and safety purpose.

The commission concludes that this action does not require a full takings analysis under §2007.043, Chapter 2007 of the Code since Chapter 2007 does not apply to those actions listed in §2007.003(b)(4) or §2007(b)(13) of the Code.

COASTAL MANAGEMENT PROGRAM CONSISTENCY REVIEW The commission has determined that this rulemaking relates to an action or actions subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act of 1991, as amended (Texas Natural Resources Code §33.201 et. seq.), and the commission's rules at 30 TAC Chapter 281, Subchapter B, Consistency with the Texas Coastal Management Program. As required by 31 TAC §505.11(b)(2) and 30 TAC §281.45(a)(3) relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission has reviewed this action for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council. For the action in 30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069, the commission has determined that the rules are consistent with the applicable CMP goal expressed in 31 TAC §501.12(1) by protecting and preserving the quality and values of coastal natural resource areas and the policy in 31 TAC §501.14(q) which requires the commission protect air quality in coastal areas. The purpose of 30 TAC §§113.2060, 113.2061, 113.2067, and 113.2069 is to control air contaminants from MSW landfills. The sections are in compliance with the regulations adopted under 40 CFR adopted under the FCAA, 42 United States Code Annotated, §7401, et. seq. to protect and enhance air quality in the coastal area so as to protect coastal natural resource areas (CNRAs) and promote the public health, safety and welfare.

HEARINGS AND COMMENTERS Public hearings on the proposal were held in Irving, Texas on May 29, 1998, in Austin, Texas on June 1, 1998, and in Houston, Texas on June 4, 1998. Only one commenter, EPA, presented oral comments at the hearings. Written comments were received from Browning-Ferris Industries (BFI), EPA, SCS Engineers (SCS), and the Texas Chapter of the Solid Waste Association of North America (TxSWANA). The public comment period closed on June 8, 1998.

EPA commented that 40 CFR Part 60.24(f) allows for less stringent emission limits or longer compliance schedules, but it does not allow the exemption of an entire class of facilities. EPA also stated that the use of surrogate NMOC values conflicts with the NMOC estimation methods in 40 CFR 60.34(c).

The commission believes that it has applied a less stringent standard to landfills that closed prior to October 9, 1993 in accordance with 40 CFR §60.24(f). The commission bases the application of a less stringent standard for landfills that closed prior to October 9, 1993, on §60.24(f)(1) for "unreasonable cost of control resulting from plant age" and on §60.24(f)(3) for "other factors specific to the facility (or class of facilities) that make application of a less stringent standard or final compliance time significantly more reasonable." The technical justification from Appendix A of the State Plan serves to support this assertion by demonstrating that under the Emission Guideline standards, the landfills that closed prior to October 9, 1993, would very likely not be required to install controls. The application of a less stringent standard would ensure that these landfills would not be required to install controls, thus effectively exempting these landfills from the Emission Guidelines rule. Using NMOC values that reflect actual Tier II testing at existing landfills is justified for this analysis because the commission did not intend to duplicate the steps that a landfill would have to follow in complying with the Emission Guidelines, but rather is predicting the most probable final result.

The commission performed an inventory of landfills that closed between November 8, 1987, and October 9, 1993, to determine which landfills contained sufficient material to require emission testing. The commission did not have reported design capacities for these landfills as this reporting was not a regulatory requirement prior to October 9, 1993. The commission estimated capacity using the following two methods.

First, assuming an average landfill life of 30 years, the commission determined that a facility would have to accept over 251 tons per day of refuse to exceed the testing threshold of 2.5 million megagrams (2.5 M Mg) of placed material. This is approximately 2.75 million tons of material. Second, assuming an average depth of 30 feet and an assumed density of compacted waste, the commission estimated a landfill would have to exceed 67.6 acres to potentially have a capacity greater than 2.5 M Mg.

Using these estimates, there are seven closed landfills that have the potential to exceed the 2.5 M Mg threshold. Two of these are Type IV landfills, which are not authorized to accept household waste and are not subject to the emission guidelines. Of the remaining five, the landfills operated by the City of Killeen and the City of El Paso were expected to exceed the emission threshold of 50 Mg per year on NMOC. A closer analysis of the permit file showed that the El Paso facility closed prior to November 8, 1987.

The commission then performed an estimate of emissions from these landfills using NMOC emission rates obtained from tests conducted at existing and closed facilities in accordance with the methods in 40 CFR §60.754. 40 CFR §60.24(f)(3) allows the use of less stringent emission standards provided there are other factors specific to a class of facilities that make the standard significantly more reasonable. In this case, the commission has sample emission rates from landfills across the state that indicate that an NMOC emission rate of 439 parts per million (ppm) is more reasonable and representative than the EPA default rate of 4,000 ppm. The commission staff and EPA have extensively discussed this issue, and EPA agrees that the use of a rate below the default rate and more representative of monitored landfill emissions within Texas is appropriate for this specific analysis of closed landfills. The commission staff used an arithmetic mean of monitored emission levels which is the origin of the 439 ppm figure. EPA prefers the use of a figure that is one standard deviation above the mean or approximately 706 ppm. Using this higher figure, the commission calculated an estimated emission rate of 56 Mg per year for Killeen by June of 2001, the earliest date by which controls could be installed. This rate would fall below the emission control threshold of 50 Mg per year by 2004. This emission rate drops even lower if the high and low NMOC monitored values are omitted from the calculations and the commission uses a rate one standard deviation above the arithmetic mean.

In summary, the emission rate for Killeen is borderline and will go slightly above to slightly below the control threshold depending on the method of statistical analysis. Using the higher EPA emission rate results in an emission level that drops below the predicted emission threshold within three years of installing controls. The commission has estimated that the cost of control for affected landfills will be \$10,000-\$12,000 per acre. The Killeen facility is 174 acres which results in a control cost in excess of \$1.74 million. The commission believes this to be an excessive and unreasonable cost based on Killeen's location outside ozone non attainment areas and

the commission's analysis demonstrating that the facility would drop below the yearly emission threshold within three years of control installation. Therefore the commission will retain the proposed definition of "existing municipal solid waste landfill" that will exclude the Killeen facility from retrofitting controls.

40 CFR §60.34(c) requires that the state plan contain provisions for use of an approved test method for measuring NMOC. This requirement is in the Texas state plan.

Prior to October 9, 1993, there was no regulatory requirements to report design capacity to the commission. In the absence of these records, the commission believes that its estimation of capacities and consequent definition of existing landfill is reasonable and appropriate. Further refinement of the estimation would require a site-by-site analysis.

EPA commented that application for a less stringent emission standard or compliance schedule is subject to the Regional Administrator's approval, and the rule should include the appropriate language.

The commission does not object to including the EPA Regional Administrator's approval of less stringent emission standards or longer compliance schedules and has made the appropriate change to the rule language.

EPA also suggested that the state plan establish increments of progress for any compliance schedule longer than 12 months though federal law does allow increments to be submitted at a later date for individual facilities.

The proposed rule referred to 40 CFR Part 60 §§60.751-60.759 which contain the requirement for affected landfills to install controls within 30 months of determined application of the emission guidelines. The commission believes that this is a sufficient compliance schedule and wishes to leave the details of contract management to the operators of the affected facilities for greater flexibility. Additionally, the state plan for Oregon, which used an identical compliance schedule as the Texas plan, was approved by EPA. The commission has elected to retain the proposed language and will not include detailed increments of progress requirements.

BFI commented that the commission should incorporate by reference revisions to the federal emission guidelines expected as a result of a settlement between National Solid Waste Management Association (NSWMA) and EPA. They also stated that it would be appropriate to address in the preamble to the final rule the extent to which rate of progress requirements for the Dallas/Fort Worth area would be affected by the promulgated rule and suggested that the commission provide for the repeal of 30 TAC §§115.152-115.159 upon EPA approval of the Texas state plan under FCAA §111(d). TxSWANA also supported this repeal.

The commission has included in the adopted rules, state plan, and preamble, references to the amendment date of the federal rules. This amendment resulted from the settlement between NSWMA and EPA. The commission has also included language in the rules that states that compliance with §§115.152-115.159, Municipal Solid Waste Landfills, will be considered compliance with the adopted emission guidelines. Operators of landfills currently regulated under Chapter 115 may use actual NMOC measurement to determine if a particular landfill exceeds the 150 Mg control threshold in §115.152. The commission believes it is necessary to leave the Chapter 115 requirements in place because 30-34 months will be required for controls specified

under these adopted emission guidelines to be implemented. As the adopted emission guidelines become effective the commission will examine the Chapter 115 requirements and make any necessary amendments.

TxSWANA and SCS supported the exclusion of landfills closed prior to October 9, 1993, from the state plan. TxSWANA also commented that §113.2069(b) of the proposal be modified to reference landfills of a design capacity "equal to or greater than 2.5 million megagrams and 2.5 million cubic meters" consistent with the NSWMA and EPA settlement.

The commission has made the appropriate change in the rule language and state plan.

STATUTORY AUTHORITY The new subchapter and sections are adopted under the TCAA, Texas Health and Safety Code, §382.011, which provides the commission authority to control the quality of the state's air; §382.012, which gives the commission authority to develop a comprehensive plan for control of the state's air; and §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the TCAA and to specify control methods when required by federal law.

§113.2061. Standards for Air Emissions.

(a) An owner or operator of an existing municipal solid waste landfill (MSWLF) shall comply with all provisions specified in 40 Code of Federal Regulations (CFR) Part 60, §§60.751-60.759 as promulgated on March 12, 1996, and amended on August 17, 1998. For purposes of this rule, the term "Administrator" wherever it appears in 40 CFR Part 60, §§60.751-60.759 shall refer to the commission.

(b) Gas collection and control systems approved by the commission and installed at an MSWLF in compliance with §115.152 of this title (relating to Control Requirements) satisfy the gas collection and control system design requirements of this section.

§113.2067. Exemptions.

A municipal solid waste landfill (MSWLF) may apply for less stringent emission standards or longer compliance schedules than those otherwise required by this division, provided that the owner or operator demonstrates to the executive director and EPA, the following:

- (1) unreasonable cost of control resulting from MSWLF age, location, or basic MSWLF design;
- (2) physical impossibility of installing necessary control equipment; or
- (3) other factors specific to the MSWLF that make application of a less stringent standard or final compliance time significantly more reasonable.

§113.2069. Compliance Schedule.

(a) An owner or operator subject to the requirements of this division shall submit the initial design capacity report in accordance with 40 Code of Federal Regulations (CFR) Part 60, §60.757(a)(2) to the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that the United States Environmental Protection Agency (EPA) has approved this rule.

(b) An owner or operator of a municipal solid waste landfill with a design capacity equal to or greater than 2.5 million megagrams and 2.5 million cubic meters and subject to the requirements of this division shall also submit the initial non-methane organic compound emission rate report in accordance with 40 CFR §60.757(b)(2) to

the executive director within 90 days from the date the commission publishes notification in the *Texas Register* that EPA has approved this rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 335. Industrial Solid Waste and Municipal Hazardous Waste

The Texas Natural Resource Conservation Commission (commission) adopts amendments to §§335.1, 335.2, 335.6, 335.11-335.13, 335.17-335.19, 335.21, 335.23, 335.24, 335.29, 335.31, 335.41, 335.61, 335.62, 335.76, 335.78, 335.91, 335.112, 335.114, 335.152, 335.154, 335.156, 335.211, 335.213, 335.214, 335.221, 335.241, 335.251, 335.261, and 335.431, concerning industrial solid waste and municipal hazardous waste. Amended §335.24 is adopted with changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6398) and will be republished. Amended §§335.1, 335.2, 335.6, 335.11-335.13, 335.17-335.19, 335.21, 335.23, 335.29, 335.31, 335.41, 335.61, 335.62, 335.76, 335.78, 335.91, 335.112, 335.114, 335.152, 335.154, 335.156, 335.211, 335.213, 335.214, 335.221, 335.241, 335.251, 335.261, and 335.431 are adopted without changes and will not be republished.

EXPLANATION OF ADOPTED RULES. The primary purpose of the adopted amendments is to revise the state rules to conform to certain federal regulations, either by incorporating the federal regulations by reference or by introducing language into the state rules which corresponds to the federal regulations. Establishing equivalency with federal regulations will enable the State of Texas to retain authorization to operate aspects of the federal hazardous waste program in lieu of the United States Environmental Protection Agency (EPA). Another purpose of the adopted rules is to reform certain state rules for purposes of streamlining, clarification, and correction. These rules also include corrections, such as changing "Texas Water Commission" to "Texas Natural Resource Conservation Commission," correcting internal cross references, and changing "his" and "he" to gender-neutral language.

Most of the federal regulations to which the adopted rules are being conformed were promulgated by the EPA between July 1, 1994, and June 30, 1996, under the authority of the Federal Resource Conservation and Recovery Act (RCRA). Some of the federal regulations promulgated prior to July 1994, are adopted where state rules need to be changed to appropriately adopt or reflect the requirements of the federal regulations. Some of the federal regulations promulgated after June 1996, are adopted in order that the state rules will have more up-to-

date requirements, or are adopted to benefit stakeholders by providing certain streamlined requirements.

FINAL REGULATORY IMPACT ANALYSIS. The commission has reviewed the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and has determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in the act. Furthermore, it does not meet any of the four applicability requirements listed in §2001.0225(a). Although this rule is adopted to protect the environment and reduce the risk to human health from environmental exposure, this is not a major environmental rule because it does not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. There is no adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state because 42 U.S.C. 6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could have an adverse effect in a material way on the economy, a sector of the economy, productivity, competition, or jobs of the state or a sector of the state; since the portions of this adoption which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such adverse effect caused by the adoption of these state rules. The reason there is no adverse effect in a material way on the environment, or the public health and safety of the state or a sector of the state is because these adopted rules are designed to protect the environment, the public health, and the public safety of the state and all sectors of the state. In addition, this rule does not exceed a standard set by federal law, exceed an express requirement of state law, exceed a requirement of a delegation agreement, or adopt a rule solely under the general powers of the agency. No comments on the proposed regulatory impact analysis were received.

TAKINGS IMPACT ASSESSMENT. The commission has prepared a Takings Impact Assessment for these rules pursuant to Texas Government Code Annotated §2007.043. The following is a summary of that assessment. The specific purpose of these rules is to ensure that Texas' state hazardous waste rules are equivalent to the federal regulations after which they are patterned, thus enabling the state to retain authorization to operate its own hazardous waste program in lieu of the corresponding federal program; to provide streamlining and regulatory reform provisions; and to make typographical and other corrections designed to clarify certain rule language, to correct references to the Code of Federal Regulations, and to correct other technical errors within the rules, including reinstating rule language which was previously inadvertently deleted and correcting cross references. The adopted rules will substantially advance this stated purpose by adopting federal regulations by reference or by introducing language intended to ensure that state rules are equivalent to the corresponding federal regulations; by incorporating certain streamlining and regulatory reform elements; by reform-

ing the rules in several areas by adding references to portions of Chapter 335 that relate to solid wastes that are recycled; and by making technical corrections, including reinstatement of rule language and cross-reference corrections. Promulgation and enforcement of these rules will not affect private real property which is the subject of the rules because the rule language consists of technical corrections and updates to bring certain state hazardous waste regulations into equivalence with more recent federal regulations, as well as language which represents rule reform or streamlining of certain requirements. There is no burden on private real property because 42 U.S.C. 6926(g) immediately imposes on the regulated community any new requirements and prohibitions under the Hazardous and Solid Waste Amendments of 1984 that are more stringent than state rules, on the effective date of the federal regulation. In other words, under federal law, the regulated community must comply with such new requirements and prohibitions that are more stringent, beginning on the effective date of the federal regulation. Since these more stringent rules are the ones which could present a burden on private real property; since the portions of this adoption which are more stringent than previously existing rules are imposed by the Hazardous and Solid Waste Amendments of 1984; and since the regulated community is already required to comply with these more stringent rules, there is no such burden when the state adopts these rules. The subject regulations do not affect a landowner's rights in private real property.

COASTAL MANAGEMENT PROGRAM. The commission has reviewed this rulemaking and found that the adoption is a rulemaking subject to the Coastal Management Program (CMP) and must be consistent with all applicable goals and policies of the CMP. The commission has prepared a consistency determination for this rule pursuant to 31 TAC §505.22 and has found that the rulemaking is consistent with the applicable CMP goals and policies. The following is a summary of that determination. The CMP goals applicable to the rulemaking are the goals to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of CNRAs. Applicable policies are construction and operation of solid waste treatment, storage, and disposal facilities, such that new solid waste facilities and areal expansions 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. Promulgation and enforcement of this rule is consistent with the applicable CMP goals and policies because the rule amendments will update and enhance the commission's rules concerning hazardous and industrial solid waste, thereby serving to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs), and also thereby serving to ensure that new solid waste facilities and areal expansions of existing solid waste facilities are 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. In addition, the adopted rule does not violate any applicable provisions of the CMP's stated goals and policies. No comments were received on the proposed CMP consistency determination.

HEARINGS AND COMMENTERS. The commission did not hold a public hearing on the proposed rule changes. The comment

period for the proposed rules closed at 5:00 p.m., July 20, 1998. There were no comments received.

Section 335.24, REQUIREMENTS FOR RECYCLABLE MATERIALS AND NONHAZARDOUS RECYCLABLE MATERIALS. The commission adopts the amendment to §335.24(l) with changes to reflect the intent of the proposal to match the federal requirements concerning hazardous waste exports to or imports from designated member countries of the Organization for Economic Cooperation and Development (OECD), as promulgated by the EPA at 61 FedReg 16290 on April 12, 1996, by adding the phrase "and any person who exports or imports such hazardous waste" and by substituting the phrase "the hazardous waste" for "it," such that adopted §335.24(l) reads as follows: "Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 Code of Federal Regulations (CFR) §262.58(a)(1), for purpose of recovery, and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996, at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to §335.261 of this title (relating to Universal Waste Rule)." This change conforms the amendment to 40 CFR §262.10(d).

Subchapter A. Industrial Solid Waste and Municipal Hazardous Waste in General

30 TAC §§335.1, 335.2, 335.6, 335.11–335.13, 335.17–335.19, 335.21, 335.23, 335.24, 335.29, 335.31

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

§335.24. Requirements For Recyclable Materials and Nonhazardous Recyclable Materials.

(a) (No change.)

(b) The following recyclable materials are not subject to the requirements of this section, except as provided in subsections (g) and (h) of this section, but are regulated under the applicable provisions of Subchapter H of this chapter (relating to Standards for the Management of Specific Wastes and Specific Types of Facilities) and all applicable provisions in Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this

title (relating to Introductory Provisions); and Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property).

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

(c) The following recyclable materials are not subject to regulation under Subchapters B-I or O of this chapter (relating to Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 86 of this title (relating to Special Provisions for Contested Case Hearings); Chapter 261 of this title (relating to Introductory Provisions); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property) or Chapter 305 of this title (relating to Consolidated Permits), except as provided in subsections (g) and (h) of this section:

(1) (No change.)

(2) scrap metal that is not already excluded under 40 Code of Federal Regulations §261.4(a)(13);

(3) fuels produced from the refining of oil-bearing hazardous waste along with normal process streams at a petroleum refining facility if such wastes result from normal petroleum refining, production, and transportation practices (this exemption does not apply to fuels produced from oil recovered from oil-bearing hazardous waste, where such recovered oil is already excluded under 40 Code of Federal Regulations §261.4(a)(12));

(4) the following hazardous waste fuels:

(A) Hazardous waste fuel produced from oil-bearing hazardous wastes from petroleum refining, production or transportation practices, or produced from oil reclaimed from such hazardous wastes where such hazardous wastes are reintroduced into a process that does not use distillation or does not produce products from crude oil so long as the resulting fuel meets the used oil specification under 40 CFR §279.11 and so long as no other hazardous wastes are used to produce the hazardous waste fuel;

(B) Hazardous waste fuel produced from oil-bearing hazardous waste from petroleum refining production, and transportation practices, where such hazardous wastes are reintroduced into a refining process after a point at which contaminants are removed, so long as the fuel meets the used oil fuel specification under 40 CFR §279.11;

(C) Oil reclaimed from oil-bearing hazardous wastes from petroleum refining, production, and transportation practices, which reclaimed oil is burned as fuel without reintroduction to a

refining process, so long as the reclaimed oil meets the used oil fuel specification under 40 CFR §279.11; and

(5) petroleum coke produced from petroleum refinery hazardous wastes containing oil by the same person who generated the waste, unless the resulting coke product exceeds one or more of the characteristics of hazardous waste in 40 CFR Part 261, Subpart C.

(d) (No change.)

(e) Owners or operators of facilities that store recyclable materials before they are recycled are regulated under all applicable provisions of this chapter, and Chapter 305 of this title (relating to Consolidated Permits); Chapter 1 of this title (relating to Purpose of Rules, General Provisions); Chapter 3 of this title (relating to Definitions); Chapter 10 of this title (relating to Commission Meetings); Chapter 20 of this title (relating to Rulemaking); Chapter 37 of this title (relating to Financial Assurance); Chapter 39 of this title (relating to Public Notice); Chapter 40 of this title (relating to Alternative Dispute Resolution Procedures); Chapter 50 of this title (relating to Action on Applications); Chapter 55 of this title (relating to Request for Contested Case Hearings); Chapter 70 of this title (relating to Enforcement); Chapter 80 of this title (relating to Contested Case Hearings); Chapter 277 of this title (relating to Use Determinations for Tax Exemption for Pollution Control Property); and the notification requirements under §335.6 of this title (relating to Notification Requirements), except as provided in subsections (a)-(c) of this section. The recycling process itself is exempt from regulation.

(f) (No change.)

(g) Recyclable materials (excluding those listed in subsections (b)(4), (c)(1), and (2)-(5) of this section remain subject to the requirements of §§335.4, 335.6, and §§335.9-335.15 of this title (relating to General Prohibitions; Notification Requirements; Recordkeeping and Annual Reporting Procedures Applicable to Generators; Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or Class 1 Waste; Recordkeeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable. Recyclable materials listed in subsections (b)(4) and (c)(2) of this section remain subject to the requirements of subsection (h) of this section.

(h) Industrial solid wastes that are nonhazardous recyclable materials and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section remain subject to the requirements of §335.4 of this title (relating to General Prohibitions). In addition, recyclable materials listed in subsection (c)(2) of this section remain subject to the requirements of §335.6 of this title (relating to Notification Requirements). Industrial solid wastes that are nonhazardous recyclable materials; and recyclable materials listed in subsection (b)(4) and subsection (c)(2) of this section may also be subject to the requirements of §§335.10-335.15 of this title (relating to Shipping and Reporting Procedures Applicable to Generators of Hazardous Waste or Class 1 Waste and Primary Exporters of Hazardous Waste; Shipping Requirements for Transporters of Hazardous Waste or Class 1 Waste; Shipping Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities; Recordkeeping and Reporting Procedures Applicable to Generators Shipping Hazardous Waste or

Class 1 Waste and Primary Exporters of Hazardous Waste; Record-keeping Requirements Applicable to Transporters of Hazardous Waste or Class 1 Waste; and Recordkeeping and Reporting Requirements Applicable to Owners or Operators of Storage, Processing, or Disposal Facilities), as applicable, if the executive director determines that such requirements are necessary to protect human health and the environment. In making the determination, the executive director shall consider the following criteria:

(1) the waste's toxicity, corrosivity, flammability, ability to sensitize or irritate, or propensity for decomposition and creation of sudden pressure;

(2) the potential for the objectionable constituent to migrate from the waste into the environment if improperly managed;

(3) the persistence of any objectionable constituent or any objectionable degradation product in the waste;

(4) the potential for the objectionable constituent to degrade into nonharmful constituents;

(5) the degree to which the objectionable constituent bioaccumulates in ecosystems;

(6) the plausible types of improper management to which the waste could be subjected;

(7) the nature and severity of potential damage to the public health and environment;

(8) whether subjecting the waste to additional regulation will provide additional protection for human health and the environment;

(9) other relevant factors.

(i) (No change.)

(j) Used oil that is recycled and is also a hazardous waste solely because it exhibits a hazardous characteristic is not subject to the requirements of Subchapters A-I or O of this chapter (relating to Industrial Solid Waste and Municipal Hazardous Waste in General; Hazardous Waste Management General Provisions; Standards Applicable to Generators of Hazardous Waste; Standards Applicable to Transporters of Hazardous Waste; Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities; Location Standards for Hazardous Waste Storage, Processing, or Disposal; Standards for the Management of Specific Wastes and Specific Types of Facilities; Prohibition on Open Dumps; and Land Disposal Restrictions), but is regulated under Chapter 324 of this title (relating to Used Oil). Used oil that is recycled includes any used oil which is reused, following its original use, for any purpose (including the purpose for which the oil was originally used). Such term includes, but is not limited to, oil which is re-refined, reclaimed, burned for energy recovery, or reprocessed.

(k) Owners or operators of facilities subject to hazardous waste permitting requirements with hazardous waste management units that recycle hazardous wastes are subject to the requirements of 40 Code of Federal Regulations Part 264 or Part 265, Subparts AA and BB, as adopted by reference under §335.152(a)(17)-(18) and §335.112(a)(19)-(20).

(l) Hazardous waste that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD), as defined in 40 Code of Federal Regulations (CFR) §262.58(a)(1), for purpose of recovery,

and any person who exports or imports such hazardous waste, is subject to the requirements of 40 CFR Part 262, Subpart H (both federal regulation references as amended and adopted through April 12, 1996 at 61 FedReg 16290), if the hazardous waste is subject to the federal manifesting requirements of 40 CFR Part 262, or subject to the universal waste management standards of 40 CFR Part 273, or subject to §335.261 of this title (relating to Universal Waste Rule).

(m) Other portions of this chapter that relate to solid wastes that are recycled include §335.1 of this title (relating to Definitions), under the definition of "Solid Waste," §335.6 of this title (relating to Notification Requirements), §335.17 of this title (relating to Special Definitions for Recyclable Materials and Nonhazardous Recyclable Materials), §335.18 of this title (relating to Variances from Classification as a Solid Waste), §335.19 of this title (relating to Standards and Criteria for Variances from Classification as a Solid Waste), and Subchapter H (relating to Standards for the Management of Specific Wastes and Specific Types of Materials).

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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Margaret Hoffman

Director, Environmental Law Division

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Subchapter B. Hazardous Waste Management General Provisions

30 TAC §335.41

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter C. Standards Applicable to Generators of Hazardous Waste

30 TAC §§335.61, 335.62, 335.76, 335.78

STATUTORY AUTHORITY The amendments are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter D. Standards Applicable to Transporters of Hazardous Waste

30 TAC §335.91

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter E. Interim Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §§335.112, §335.114

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of his state; and under Texas Health and Safety Code, Solid Waste disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter F. Permitting Standards for Owners and Operators of Hazardous Waste Storage, Processing, or Disposal Facilities

30 TAC §§335.152, 335.154, 335.156

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter H. Standards for the Management of Specific Wastes and Specific Types of Facilities
Division 1. Recyclable Materials Used in a Manner Constituting Disposal

30 TAC §§335.211, 335.213, 335.214

STATUTORY AUTHORITY. The amendments are adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

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Division 2. Hazardous Waste Burned for Energy Recovery

30 TAC §335.221

STATUTORY AUTHORITY The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste.

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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Division 3. Recyclable Materials Utilized for Precious Metal Recovery

30 TAC §335.241

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas

Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste.

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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Division 4. Spent Lead-Acid Batteries Being Reclaimed

30 TAC §335.251

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste.

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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Division 5. Universal Waste Rule

30 TAC §335.261

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste.

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 O. Land Disposal Restrictions

30 TAC §335.431

STATUTORY AUTHORITY. The amendment is adopted under Texas Water Code §5.103 and §5.105, which provide the commission with the authority to adopt any rules necessary to carry out its powers and duties under the provisions of the Texas Water Code or other laws of this state; and under Texas Health and Safety Code, Solid Waste Disposal Act, §361.017 and §361.024, which authorize the commission to regulate industrial solid waste and municipal hazardous waste and to adopt rules consistent with the general intent and purposes of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on September 29, 1998.

TRD-9815264

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

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Proposal publication date: June 19, 1998

For further information, please call: (512) 239-6087



TITLE 34. PUBLIC FINANCE

Part I. Comptroller of Public Accounts

Chapter 5. Funds Management (Fiscal Affairs)

Subchapter O. Uniform Statewide Accounting System

34 TAC §5.200

The Comptroller of Public Accounts adopts an amendment to §5.200, concerning the state property accounting system, without changes to the proposed text as published in the June 19, 1998, issue of the *Texas Register* (23 TexReg 6424) and will not be republished.

The purpose of the amendment is to implement House Bill 1572, 75th Legislature, 1997, which provides, in general, that a charitable organization that expends funds received from the state in order to purchase computer equipment may not discard or dispose of the equipment before the fourth anniversary of the date the organization purchased the equipment.

No comments were received regarding adoption of the amendment.

This amendment is adopted under Texas Civil Statutes, Article 9023d, which requires the comptroller to adopt rules to implement this statute.

The amendment implements House Bill 1572, 75th Legislature, 1997.

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 October 12, 1998.

TRD-9815930

Martin Cherry

Chief, General Law

Comptroller of Public Accounts

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Proposal publication date: June 19, 1998

For further information, please call: (512) 463-4062



Part V. Texas County and District Retirement System

Chapter 103. Calculations or Types of Benefits

34 TAC §103.6

The Texas County and District Retirement System adopts new §103.6, concerning the recalculation of a retirement annuity to take into account those contributions that were based on compensation for services performed during membership in the retirement system but which were deposited with the system after the member's effective retirement date. The rule is adopted without changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8820) and will not be republished.

The rule is necessary to insure that a member's retirement annuity is based upon all of a member's contributions attributable to compensation for services performed during membership.

The rule will cause the retirement annuity amount to be recalculated so as to include post-retirement contributions which are attributable to compensation the member received for services performed during membership.

No comments were received regarding adoption of the new section.

The new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to promulgate rules necessary or desirable for the effective administration of the system.

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 October 9, 1998.

TRD-9815815

Terry Horton

Director
Texas County and District Retirement System
Effective date: November 1, 1998
Proposal publication date: August 28, 1998
For further information, please call: (512) 328-8889



34 TAC §103.7

The Texas County and District Retirement System adopts new §103.7, concerning the manner of determining the amount of reestablished current service credit and multiple matching credit that is to be credited to the account of the member when the amount originally withdrawn plus a withdrawal charge is paid into the system in accordance with a subdivision order under the Government Code, §843.003 authorizing the reestablishment of such credit. The new section is adopted without changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8821) and will not be republished.

The rule is necessary to establish a written procedure for determining the monetary amount of reestablished service credit under Government Code, §843.003.

The rule will cause a deposit paid by a member in accordance with §843.003 after December 31, 1998, to be treated the same as accumulated contributions made by the member. The multiple matching credit percentage with respect to such deposit is that percentage in effect during the month in which the deposit is made.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to promulgate rules necessary or desirable for the effective administration of the system.

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-9815814
Terry Horton
Director
Texas County and District Retirement System
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Proposal publication date: August 28, 1998
For further information, please call: (512) 328-8889



34 TAC §103.8

The Texas County and District Retirement System adopts new §103.8, concerning the determination of the monthly amount of the retirement annuity payable with respect to a retiree during the limitation year. The new section is adopted without changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8822) and will not be republished.

The rule is necessary to establish a written procedure for applying the limitation of §415 of the Internal Revenue Code

to benefits payable under the retirement system when those benefits would otherwise exceed the §415 limit.

The rule will cause the scheduled monthly annuity payments to be of equal amounts during the limitation year by prorating the applicable §415 limit over the number of scheduled payments to be made during the limitation year.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to promulgate rules necessary or desirable for the effective administration of the system.

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-9815813
Terry Horton
Director
Texas County and District Retirement System
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For further information, please call: (512) 328-8889



Chapter 107. Miscellaneous Rules

34 TAC §107.5

The Texas County and District Retirement System adopts new §107.5, concerning the date upon which a membership in the retirement system terminates by the withdrawal of contributions and the terms and procedure for reinstatement of such terminated membership. The new section is adopted without changes to the proposed text as published in the August 28, 1998, issue of the *Texas Register* (23 TexReg 8822) and will not be republished.

The rule is necessary to clearly identify the point at which a membership is terminated by withdrawal of accumulated contributions and to establish the terms and procedure under which such a termination may be rescinded and membership restored.

The rule provides that a membership terminates by the withdrawal of accumulated contributions on the date that the retirement system mails or electronically transfers payment of any portion of the member's individual account balance. The rule also provides that membership may be reinstated and the person's individual account restored if the payment by the retirement system was made by check or checks and all such checks are returned to and received by the retirement system within 30 days of the date of termination.

No comments were received regarding the adoption of the new section.

The new section is adopted under the Government Code, Chapter 845, Subchapter B, §845.102 which provides the board of trustees with the authority to promulgate rules necessary or desirable for the effective administration of the system.

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 October 9, 1998.

TRD-9815812

Terry Horton

Director

Texas County and District Retirement System

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Proposal publication date: August 28, 1998

For further information, please call: (512) 328-8889

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

Part XIII. Texas Commission on Fire Protection

Chapter 421. Standards for Certification

37 TAC §§421.1, 421.3, 421.5, 421.7, 421.9

The Texas Commission on Fire Protection adopts the repeal of §§421.1, 421.3, 421.5, 421.7, and 421.9, concerning standards for certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5331).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022(a)(5), which provides the commission with authority to establish minimum requirements for fire protection personnel.

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 October 8, 1998.

TRD-9815697

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

Effective date: November 1, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 918-7189

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The Texas Commission on Fire Protection adopts new §§421.1, 421.3, 421.5, 421.7, and 421.9, concerning standards for certification. Section 421.5 is adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5331). The change to §421.5(33) clarifies the

definition of "years of experience" for the purpose of higher levels of certification. Sections 421.1, 421.3, 421.7, and 421.9 are adopted without changes and will not be republished.

The justification for this section is the elimination of duplication of training and certification requirements by consolidating the paid and volunteer programs.

The new chapter includes sections pertaining to procedures for advisory committee meetings, standards set by the commission for functional position descriptions, definitions, recognition of previous volunteer training, and designation of fire protection duties. The new §421.1 changes the references to the fire fighter advisory committee to address statutory changes and adds provisions for removal of committee members. New §421.3 deletes unnecessary language. New §421.5 changes definitions mainly to integrate the volunteer certification program into the paid fire protection personnel certification program. New §421.7 transfers language concerning recognition of previous volunteer training from the repealed volunteer rules. Finally, new §421.9 adds language to address statutory changes allowing individual certification and define compensation limits for persons designated as volunteer or other auxiliary fire fighters.

Comments were received from Burleson Fire Department and Waco Fire Department.

One commentator requested that the definition of "years of experience" be changed to allow all volunteer fire service experience count towards higher levels of certification and not just time while certified by the commission. The commission agreed in part and the modified definition allows credit for years of experience while certified by the State Firemen's and Fire Marshals' Association. Another commentator suggested that the definition of "years of experience" be changed to allow credit for experience obtained out-of-state. The commission agreed in part and changed the definition to recognize experience obtained out-of-state while holding an equivalent certification.

The new chapter is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum requirements for fire protection personnel; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; Texas Government Code, §419.0322, which provides for limits on compensation; and Texas Government Code, §419.071, which provides the commission with authority to establish standards for the volunteer certification program.

§421.5. Definitions.

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

(1) Accredited training—A curriculum or training program which carries written approval from the commission, credit hours that appear on an official transcript from an accredited college or university and any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(2) Admission to employment—An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(3) Approved training—Any training which will be used toward any level of certification must be submitted to the commission

for approval prior to the commencement of the training. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course.

(4) Assigned/work—A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the Texas Commission on Fire Protection certification.

(5) Assistant fire chief—The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter—A volunteer fire fighter.

(7) Benefits—Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Class hour—Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(9) Code—The official legislation creating the commission.

(10) College credits—Credits earned for studies satisfactorily completed at an accredited institution of higher education, or courses delivered through the National Emergency Training Center residency programs, and recommended for college credit by the American Council on Education (ACE).

(11) Commission—Texas Commission on Fire Protection.

(12) Compensation—Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(13) Coordinator—The official responsible for a commission approved training curriculum, training facility, and/or school (other than fire department) by whatever title he/she may be called.

(14) Department—A fire department which is a part of, or is administered by, a municipality or other governmental entity which is responsible for fire prevention and protection.

(15) Expired—Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter—A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief—The head of a fire department.

(18) Fire protection personnel—Any person who is a permanent full-time employee of a government entity and who is assigned duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(19) Fire suppression duties—Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(20) Full-time—An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(21) Government entity—The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(22) High school—A school accredited as a high school by the Texas Education Agency.

(23) Lead instructor—An individual charged with the responsibility of conducting a training school under the provision of the Code.

(24) Municipality—Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as herein defined.

(25) Participating volunteer fire fighter—An individual who voluntarily seeks certification and regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(26) Participating volunteer fire department—A fire department that voluntarily seeks regulation by the Commission under the Government Code, Chapter 419, Subchapter D.

(27) Part-time fire protection employee—An individual who is designated as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(28) Recognition of training—A document issued by the Commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(29) School—Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(30) Trainee—An individual who is participating in a commission approved training program.

(31) Training officer—The officer or supervisor, by whatever title he or she may be called, that is in charge of a commission approved training program.

(32) Volunteer fire protection personnel—Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(33) Years of experience—For purposes of higher levels of certification, defined as full years of service while holding:

(A) a Texas Commission on Fire Protection certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(B) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have completed as a minimum

requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent; or

(C) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, and have completed as a minimum requirements for a Texas Department of Health Emergency Care Attendant (ECA) certification, or its equivalent.

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 October 8, 1998.

TRD-9815698

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



Chapter 423. Fire Suppression

Subchapter A. Minimum Standards for Structure Fire Protection Personnel Certification

37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11

The Texas Commission on Fire Protection adopts the repeal of §§423.1, 423.3, 423.5, 423.7, 423.9, and 423.11, concerning minimum standards for structure fire protection personnel certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5334).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions.

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-9815699

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



37 TAC §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, 423.13

The Texas Commission on Fire Protection adopts new §§423.1, 423.3, 423.5, 423.7, 423.9, 423.11, and 423.13, concerning minimum standards for structure fire protection personnel certification. Section 423.5 is adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5335). The change to §423.5(a)(2)(A) and (B) adds the word "or" to provide clarity. Sections 423.1, 423.3, 423.7, 423.9, 423.11, and 423.13 are adopted without changes and will not be republished.

The justification for this section is the elimination of duplication of examination requirements deemed unnecessary resulting from integration of paid and volunteer certification programs.

New §423.1 reorganizes existing language to clarify that the provisions apply to all persons holding structure fire protection personnel positions. New §423.3 adds language to integrate volunteer training to qualify for basic structure fire protection personnel certification. New §§423.5, 423.7, 423.9, 423.11, and 423.13, pertaining to higher levels of structure certification renumber existing sections pertaining to the same subject matter.

Comments were received from Grapevine Fire Department, Mansfield Fire Department, College Station Fire Department, Houston Fire Department, Galveston Fire Department, Dallas/Fort Worth Airport Fire Department, and Port Arthur Fire Department.

One commentator argued that the commission should discontinue the requirement of ECA certification by the Texas Department of Health to qualify for basic structure fire protection certification. Many other commentators spoke in favor of the ECA requirement as an essential component of fire fighter training inasmuch as medical response is part of most fire department responsibilities. Medical training often becomes an issue when fire fighters are injured. ECA certification adds to fire fighter's confidence and the TDH is best qualified to test medical training. The commission disagreed with the comment against the ECA requirement for the reasons outlined by the commentators in favor of the requirement.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel positions; and Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel.

§423.5. *Minimum Standards for Intermediate Structure Fire Protection Personnel Certification.*

(a) Applicants for Intermediate Structure Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Structure Fire Protection Personnel Certification as defined in §423.3 of this title (relating to Minimum Standards for Basic Structure Fire Protection Personnel Certification);

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Structure Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Structure Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9815700

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



Subchapter B. Minimum Standards for Aircraft Crash and Rescue Fire Protection Personnel

37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209

The Texas Commission on Fire Protection adopts the repeal of §§423.201, 423.203, 423.205, 423.207, and 423.209, concerning minimum standards for aircraft crash and rescue fire protection personnel certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5337).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish

minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 October 8, 1998.

TRD-9815701

T.R. Thompson

General Counsel

Texas Commission of Fire Protection

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For further information, please call: (512) 918-7189



Subchapter B. Minimum Standards for Aircraft Rescue Fire Fighting Personnel

37 TAC §§423.201, 423.203, 423.205, 423.207, 423.209

The Texas Commission Fire Protection adopts new §§423.201, 423.203, 423.205, 423.207, and 423.209, concerning minimum standards for aircraft rescue fire fighting personnel. Section 423.203 is adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5338). The change to §423.203(b)(1) clarifies the requirement that an individual seeking certification as aircraft rescue firefighting personnel must actually hold certification as basic structure fire protection personnel. The change to §423.203(b)(2)(B) adds the word "or" for clarity. Sections 423.201, 423.205, 423.207, and 423.209 are adopted without changes and will not be republished.

The justification for this section is the public is assured that personnel assigned to aircraft rescue fire protection duties are adequately trained prior to assignment.

New §423.201 concerning aircraft rescue fire fighting personnel clarifies existing language concerning requirements for assignment to aircraft rescue fire suppression duties to include testing and training in an approved fire suppression course as well as testing and training in an approved aircraft rescue fire protection course. Certification must be obtained within one year of assignment rather than two. Emergency Care Attendant certification is not required for assignment, but is required for aircraft rescue fire fighting personnel certification in addition to testing and training in both basic structure fire suppression and aircraft rescue fire protection pursuant to new §423.203. New §§423.205, 423.207, and 423.209, concerning higher levels of aircraft certification change the terminology from "aircraft rescue and fire protection personnel" to "aircraft rescue fire fighting personnel."

Comments were received from Dallas/Fort Worth Airport Fire Department and Waco Fire Department.

One commentator suggested that the term "aircraft fire protection personnel" be changed to "aircraft rescue fire fighting personnel" to emphasize this role in rescue at aircraft emergencies. The commission agreed with the commentator and has changed the reference throughout commission rules. Another commentator stated the rules need clarification whether aircraft fire protection personnel must have structure certification or just

a basic fire suppression course. The commission agreed and clarified the rule to specifically require structure certification as a prerequisite. The commentator also stated that the rule was unclear as to what certification and training was required to perform aircraft fire protection duties. The commission disagreed with the commentator for the reason that the rules plainly state the training and testing requirements. The commentator also questioned whether structure certification should be required for aircraft fire protection personnel. The commission disagreed with the comment for the reason that it considers structure certification as a basic building block upon which specialized fire protection personnel positions such as aircraft fire protection personnel build upon.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §410.022, which provides the commission authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; and Texas Government Code, §419.038, which provides the commission with authority to establish requirements for aircraft certification.

§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.

(a) Training programs that are intended to satisfy the requirements for basic aircraft rescue fire fighting personnel certification must meet the curriculum, competencies, and hour requirements of these sections. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain basic aircraft rescue fire fighting personnel certification the individual must:

(1) hold basic structure fire protection personnel certification;

(2) complete a training program specific to aircraft rescue fire suppression consisting of one of the following:

(A) a commission approved Basic Aircraft Rescue Fire Suppression curriculum as specified in Chapter 2 of the Commission Certification Curriculum Manual for Paid Fire Protection Personnel as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual). This course must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Certified Training Facilities); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft rescue fire suppression curriculum; or

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft rescue fire suppression curriculum;

(3) successfully pass a commission examination pertaining to aircraft rescue fire protection conducted according to the rules set forth in Chapter 439 of this title (relating to Examinations for Certification).

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 2 (pertaining to Basic Aircraft Rescue Fire Protection) of the Commission Certification Curriculum Manual for Paid Fire Protection Personnel.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time aircraft rescue firefighter may be certified as an aircraft rescue fire fighting personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time aircraft rescue firefighter, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-9815702

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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For further information, please call: (512) 918-7189



Subchapter C. Minimum Standards for Marine Fire Protection Personnel

37 TAC §§423.301, 423.303, 423.305, 423.307, 423.309

The Texas Commission on Fire Protection adopts the repeal of §§423.301, 423.303, 423.305, 423.307, and 423.309, concerning minimum standards for marine fire protection personnel, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5340).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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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The Texas Commission on Fire Protection adopts new §§423.301, 423.303, 423.305, 423.307, and 423.309, concerning minimum standards for marine fire protection personnel. Section 423.303 and §423.305 are adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5340). The change to §423.303(b)(1) clarifies the requirement that an individual seeking certification as marine fire protection personnel must actually hold certification as basic structure fire protection personnel. The change to §423.305(a)(2)(B) adds the word "or" for clarity. Sections 423.301, 423.307, and 423.309 are adopted without changes and will not be republished.

The justification for this section is the public is assured that personnel assigned to marine fire protection duties are adequately trained prior to assignment.

New §423.301 and §423.303 clarifies the requirements for assignment and certification as marine fire protection personnel in the same manner as aircraft rescue fire fighting personnel, including eligibility for structure certification by meeting testing and training requirements for structure certification. New §§423.305, 423.307, and 423.309, readopt existing provisions for higher levels of marine certification.

Comments were received from Waco Fire Department.

The commentator questioned whether structure certification should be required for marine fire protection personnel. The commission disagreed with the comment for the reason that it considers structure certification as a basic building block upon which specialized fire protection personnel positions such as marine fire protection personnel build upon. The commentator also noted the absence of a provision that specifically requires marine fire fighters with structure duties to have basic structure certification. The commission considered the requirement unnecessary.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions; Texas Government Code §419.032, which provides the commission with authority to establish standards for employment as fire protection personnel; and Texas Government Code, §419.037, which provides the commission with authority to establish requirements for marine certification.

§423.303. Minimum Standards For Basic Marine Fire Protection Personnel Certification.

(a) Training programs that are intended to satisfy the requirements for Basic Marine Fire Protection Personnel certification, must meet the curriculum, competencies, and hour requirements

of this subchapter. All applicants for certification must meet the examination requirements of this section.

(b) In order to obtain basic Marine Fire Protection Personnel certification the individual must:

- (1) hold basic structure fire protection personnel certification;
- (2) complete a training program specific to marine fire protection consisting of one of the following:

(A) complete the commission approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the commission's document titled "Commission Certification Curriculum Manual", as approved by the commission in accordance with Chapter 443, of this title, relating to Certification Curriculum Manual. The commission approved marine fire protection curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Minimum Standards for Certified Training Facilities); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Basic Marine Fire Protection Curriculum; or

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to the commission approved Basic Marine Fire Protection Curriculum.

(3) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

(c) Out-of-state or military training programs which are submitted to the commission for the purpose of determining equivalency will be considered equivalent if the subjects taught, subject content, hours of training in each subject, and total hours of training meet or exceed the requirements set forth in Chapter 3 (pertaining to Marine Fire Protection) of the Commission's Certification Curriculum Manual for Paid Fire Protection Personnel.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time marine fire protection personnel may be certified as a marine fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(e) If a person holds a current certification as a part-time marine fire protection personnel, the Texas Department of Health emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Texas Department of Health.

§423.305. Minimum Standards For Intermediate Marine Fire Protection Personnel Certification.

(a) Applicants for Intermediate Marine Fire Protection Personnel Certification must complete the following requirements:

(1) hold as a prerequisite a Basic Marine Fire Protection Personnel Certification as defined in §423.303 of this title (relating to Minimum Standards for Basic Marine Fire Protection Personnel Certification).

(2) acquire a minimum of four years of fire protection experience and complete the courses listed in one of the following options:

(A) Option #1 - Successfully complete six semester hours of fire science or fire technology from an approved Fire

Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsection (c) and (d) of this section; or

(B) Option #2 - Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option #3 - Successfully complete three semester hours of college courses listed in Option #1 and a minimum of 48 hours in any National Fire Academy courses.

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Intermediate Marine Fire Protection Personnel Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Marine Fire Protection Personnel Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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T.R. Thompson
General Counsel
Texas Commission on Fire Protection
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Chapter 425. Fire Protection Instructor

Subchapter A. Fire Service Instructor Certification

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection adopts the repeal of §§425.1, 425.3, 425.5, 425.7, and 425.9, concerning minimum standards for fire service instructor certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5342).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons

as qualified fire protection instructors under conditions the commission prescribes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Instructor Training Courses

37 TAC §425.201

The Texas Commission on Fire Protection adopts the repeal of §425.201, concerning instructor training courses, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5344).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

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. Fire Education Specialist Certification

37 TAC §§425.301, 425.303, 425.305, 425.307, 425.309

The Texas Commission on Fire Protection adopts the repeal of §§425.301, 425.303, 425.305, 425.307, and 425.309, concerning minimum standards for fire education specialist certification,

without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5347).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

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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T.R. Thompson

General Counsel

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Subchapter D. Associate Instructor Certification

37 TAC §425.401

The Texas Commission on Fire Protection adopts the repeal of §425.401, concerning minimum standards for associate instructor certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5348).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(3), which provides the commission with authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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Chapter 425. Fire Instructors

Subchapter A. Fire Service Instructor Certification

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection adopts new §§425.1, 425.3, 425.5, 425.7, and 425.9, concerning minimum standards for fire instructor certification. Section 425.3 is being adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (22 TexReg 5343). The change to §425.3(b)(2)(A) adds the word "or" for clarity. Sections 425.1, 425.5, 425.7, and 425.9 are adopted without changes and will not be republished.

The justification for this section is that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase.

New §425.1 readopts existing language. new §425.3 integrates provisions allowing for volunteer instructors to be certified as basic fire service instructors. New §425.5 and §425.7 clarify the college course requirements for intermediate and advanced fire service instructor certification. New §425.9 allows for volunteer instructors to obtain master fire service instructor certification.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

§425.3. Minimum Standards for Basic Fire Service Instructor Certification.

(a) In order to become certified as a basic fire service instructor the individual must:

(1) be a member of a paid, volunteer, or regulated non-governmental fire department;

(2) have a minimum of three years experience relating to fire protection in one or more or any combination of the following:

(A) a paid, volunteer, or regulated non-governmental fire department; or

(B) a department of a state agency, education institution or political subdivision providing fire protection training and related responsibilities;

(3) be a high school graduate or possess a GED certificate;

(4) possess an active certificate from the commission in a discipline with a commission-approved curriculum;

(5) have completed "Instructional Techniques for Company Officers" or 15 class hours of teacher instructional training courses; and

(6) submit an instructor application, with documentation to verify the aforementioned requirements, to the commission for processing.

(b) Approved areas of instruction shall include the following.

(1) Possession of one or more active certifications as stated in subsection (a)(4) of this section will be considered as documentation of knowledge/expertise to instruct in all of the subject areas identified in the curricula in which the certificate(s) are held.

(2) Individuals desiring to instruct in basic and advanced subjects they have not previously been approved for must have completed the course they are seeking to instruct or have completed comparable training in the same subject area. Proof of training shall be attached to and submitted with a Course/School Prior Approval Form when making application for course approval by the commission. Proof of training in a subject need be submitted only once. The following items are acceptable for proof of training:

(A) submit a copy of a commission approved certificate of completion bearing the course approval number and course identification number; or

(B) college semester courses of equivalent training identified on college transcripts; or

(C) provide complete written documentation of equivalent training for staff review.

(c) The basic fire service instructor certification meets requirements of NFPA 1041, Standard for Fire Service Instructor Professional Qualifications, for Fire Instructor Level I.

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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T.R. Thompson

General Counsel

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Subchapter B. Fire Education Specialist Certification

37 TAC §§425.201, 425.203, 425.205, 425.207, and 425.209

The Texas Commission on Fire Protection adopts new §§425.201, 425.203, 425.205, 425.207, and 425.209, concerning minimum standards for fire education specialist certification, without changes to the text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5345).

The justification for this section is that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase.

New 425.201 readopts existing language and renumbers the section. New 425.203 adds language to recognize volunteer fire department experience to qualify for basic fire education specialist certification. New 425.205 and 425.207 clarify course requirements for intermediate and advanced fire education

specialist certification. New 425.209 increases the number of fire science hours for master fire education specialist from 15 to 18 to align with master requirements for other certifications.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, 419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, 419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

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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T.R. Thompson

General Counsel

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Subchapter C. Associate Instructor Certification

37 TAC §425.301

The Texas Commission on Fire Protection adopts new section §425.301, concerning minimum standards for associate instructor certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5347).

The justification for this section is that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase.

New §425.301 clarifies course requirements for associate instructor certification.

No comments were received on the proposed new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection instructors under conditions the commission prescribes.

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 D. Instructor Training Courses

37 TAC §425.401

The Texas Commission on Fire Protection adopts new §425.401, concerning instructor training courses, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5348).

The justification for this section is that volunteer instructors are considered the same as paid instructors and the availability of approved fire instructor courses may increase.

New §425.401 reorganizes existing language to clarify the qualifications of persons who may teach approved instructor training courses.

No comments were received on the proposed new section.

The new section is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify persons as qualified fire protection personnel instructors under conditions the commission prescribes.

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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T.R. Thompson

General Counsel

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Chapter 427. Certified Training Facilities

37 TAC §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, 427.19

The Texas Commission on Fire Protection adopts the repeal of §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, and 427.19, concerning certified training facilities, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5350).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject matter.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028(2),

which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

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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T.R. Thompson

General Counsel

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The Texas Commission on Fire Protection adopts new §§427.1, 427.3, 427.5, 427.7, 427.9, 427.11, 427.13, 427.15, 427.17, and 427.19, pertaining to certified training facilities, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5350).

The justification for this section is the uniformity in training for hazardous materials technician training and providing more flexibility for scheduling training by integrating the volunteer phase level training program.

The chapter is comprised of sections pertaining to requirements for certification as certified training facilities for fire protection personnel including facility requirements, apparatus, protective clothing, equipment, reference materials, records, testing procedures, staff, and general information. New §427.1 adds certification requirements for training facilities that provide basic instruction for certification as a hazardous materials technician and streamlines the documentation required for approval of a course where the facility has previously been approved. New §427.3 concerning facilities eliminates obsolete language concerning insurance key rate credit and adds new subsection (7) concerning an area for performance skills training and testing. New §427.5 and §427.7 concerning apparatus and protective clothing readopt existing language. New §427.9 concerning equipment allows the use of training simulators and mock training aids. New §427.11 and §427.13 readopts existing language concerning reference materials and records. New §427.15 adds training facility testing requirements for hazardous material technician training. Section 427.15 also includes provisions applicable to volunteer training facilities conducting an approved basic fire suppression phase level training program for volunteer fire fighters. New §427.17 concerning staff streamlines existing language. New §427.19 adds language to recognize training through a program that has been approved by the commission as equivalent. The new Chapter is intended to integrate and continue to recognize training at volunteer training facilities currently certified by the commission.

No comments were received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.028, which provides the commission the authority to certify facilities operated for training fire protection personnel or recruits.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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Chapter 429. Minimum Standards for Fire Inspectors

37 TAC §§429.1, 429.3, 429.5, 429.7, 429.9

The Texas Commission on Fire Protection adopts the repeal of §§429.1, 429.3, 429.5, 429.7, and 429.9, concerning minimum standards for fire inspector certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5353).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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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The Texas Commission on Fire Protection adopts new §§429.1, 429.5, 429.7, and 429.9, concerning standards for fire inspectors, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5353). Section 429.3(b) is adopted with changes in order to comply with *Texas Register* rule structure.

The justification for this section is that the public is assured that personnel assigned fire code enforcement duties are adequately trained prior to assignment.

The chapter includes sections concerning assignment of fire inspection personnel, basic fire inspector certification, and higher levels including intermediate, advanced, and master certification. New §429.1 clarifies the requirement of training and testing prior to assignment to fire code enforcement duties to be consistent with the suppression disciplines. New §429.3 concerning basic fire inspector certification eliminates language that allowed training to be completed within one year of initial appointment inasmuch as new §429.1 requires training prior to assignment. New §§429.5, 429.7, and 429.9 readopt existing language pertaining to higher levels of fire inspector certification.

Comments were received from Waco Fire Department.

The commentator stated that the rule was ambiguous as to whether a person must be certified prior to being assigned to a fire inspector position. The commission disagreed with the commentator for the reason that the rule is clear that training and testing only is required prior to assignment to fire code enforcement duties. Further, code enforcement duties are clearly defined in the rules. Certification is required within one year of assignment allowing departments flexibility on when to pay the certification fee.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

§429.3. *Minimum Standards for Basic Fire Inspector Certification.*

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Basic Fire Inspector an individual must complete a commission approved fire inspection training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire inspection training program shall consist of one of the following:

(1) completion of the commission approved Basic Fire Inspector Curriculum, as specified in Chapter 4 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(2) successful completion of an out-of-state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Inspector Curriculum as specified in Chapter 4 of the commission's document titled "Commission Certification Curriculum Manual"; or

(3) successful completion of the following college courses: Fundamentals of Fire Protection 3 semester hours; Fire Protection Systems 3 semester hours; Fire Prevention 3 semester hours; Building Code 3 semester hours; Building Construction 3 semester hours; Hazardous Materials I 3 semester hours; Fundamen-

tals of Speech 3 semester hours. Total semester hours 21* *NOTE: Building Code and Building Construction may be combined into a single three semester hour class. If this is the case, the total semester hours may be reduced to 18; or

(4) successful completion of a minimum of 240 hours of instruction in a National Fire Academy resident program for fire inspection. The resident program must include the basic course, Fire Inspection Principles (80 hours), and a minimum of 160 hours of instruction in at least two of the following courses:

- (A) Fire Prevention Specialist II (80 hours); or
- (B) Plans Review for Inspectors (80 hours); or
- (C) Code Management: A Systems Approach (80 hours); or
- (D) Management of Fire Prevention Programs (80 hours); or
- (E) Strategic Analysis of Fire Prevention Programs (80 hours).

(c) National Fire Academy resident courses of equal or greater class hours that replace a course discontinued by the National Fire Academy may be used towards requirements for certification in place of the discontinued course.

(d) A person who holds or is eligible to hold a certificate upon employment as a part-time fire inspector may be certified as a fire inspector, of the same level of certification, without meeting the applicable examination 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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Chapter 431. Minimum Standards for Fire and Arson Investigator

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, 431.11

The Texas Commission on Fire Protection adopts the repeal of §§431.1, 431.3, 431.5, 431.7, 431.9, and 431.11, concerning minimum standards for fire and arson investigator certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5355).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire

Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 431. Fire Investigation

Subchapter A. Minimum Standards for Arson Investigator Certification

37 TAC §§431.1, 431.3, 431.5, 431.7, 431.9, and 431.11

The Texas Commission on Fire Protection adopts new §§431.1, 431.3, 431.5, 431.7, 431.9, and 431.11, concerning Fire Investigation including new Subchapter A pertaining to arson investigator certification. Section 431.3 and §431.7 are adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5356). The change to §431.3(b)(1) adds language to allow documentation verifying that an individual is a federal law enforcement officer to be accepted in place of a current basic peace officer license issued by the Texas Commission on Law Enforcement Officers Standards and Education. The change to §431.7(a)(2)(C) adds the word "or" for clarity. Sections 431.1, 431.5, 431.9 and 431.11 are adopted without changes and with not be republished.

The justification for this section is that the public is assured that personnel assigned to arson investigation duties by a fire department are adequately trained prior to assignment to such duties.

New Subchapter A redesignates the existing "fire and arson investigator" as simply "arson investigator" and is intended to apply to investigators who are licensed peace officers. New §431.1 clarifies the requirement of training and testing prior to assignment to arson investigation duties in a manner consistent with suppression disciplines and corrects a cross reference relating to continuing education requirements. New §431.3 deletes language allowing training to be completed within one year of appointment to comply with the requirement of testing and training prior to assignment in new §431.1. New §§431.5, 431.7, 431.9, and 431.11 concerning higher levels of arson investigator certification readopt existing language with the simplified designation of "arson investigator."

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

§431.3. *Minimum Standards for Basic Arson Investigator Certification.*

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Basic Arson Investigator an individual must:

(1) possess a current basic peace officer's license from the Texas Commission on Law Enforcement Officer Standards and Education or documentation that the individual is a federal law enforcement officer;

(2) hold a current commission as a peace officer with the employing entity for which the arson investigations will be done;

(3) complete a commission approved basic fire investigation training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic fire investigation training program shall consist of one of the following:

(A) completion of the commission approved Basic Fire Investigator Curriculum, as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual," as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual); or

(B) successful completion of the National Fire Academy Resident Fire Arson Investigator Course; or

(C) successful completion of an out-of-state training program which has been submitted to the commission for evaluation and found to meet the minimum requirements as listed in the commission approved Basic Fire Investigator Curriculum as specified in Chapter 5 of the commission's document titled "Commission Certification Curriculum Manual"; or

(D) successful completion of the following college courses: Arson Investigator I 3 semester hours Arson Investigator II 3 semester hours Hazardous Materials I 3 semester hours Building Construction 3 semester hours Fire Protection Systems 3 semester hours Total semester hours 15 NOTE: The three semester hour course "Building Codes and Construction" may be substituted for Building Construction.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time arson investigator may be certified as an arson investigator, of the same level of certification, without meeting the applicable examination requirements.

§431.7. *Minimum Standards for Advanced Arson Investigator Certification.*

(a) Applicants for Advanced Arson Investigator certification must complete the following requirements:

(1) hold as a prerequisite an Intermediate Arson Investigator Certification as defined in §431.5 of this title (relating to Minimum Standards for Intermediate Arson Investigator Certification);

(2) acquire a minimum of eight years of fire protection experience and complete the courses listed in one of the following options:

(A) Option 1—Successfully complete six semester hours of fire science or fire technology from an approved Fire Protection Degree Program and submit documentation as required by the Commission that the courses comply with subsections (c) and (d) of this section; or

(B) Option 2—Complete a minimum of 96 hours of instruction in any National Fire Academy courses; or

(C) Option 3—Successfully complete three semester hours of college courses listed in Option 1 and a minimum of 48 hours in any National Fire Academy courses; or

(D) Option 4—Advanced Arson for Profit (Bureau of Alcohol, Tobacco, and Firearms resident or field course, 80 hours)

(b) College level courses from both the upper and lower division may be used to satisfy the education requirement for Advanced Arson Investigator Certification.

(c) Non-traditional credit awarded at the college level, such as credit for experience or credit by examination obtained from attending any school in the commission's document titled "Commission Certification Curriculum Manual" or for experience in the fire service, may not be counted toward higher levels of certification.

(d) The training required in this section must be in addition to any training used to qualify for any lower level of Arson Investigator Certification. Repeating a course or course of similar content cannot be used towards higher levels of certification.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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Subchapter B. Fire Investigator Certification

37 TAC §431.201, §431.203

The Texas Commission on Fire Protection adopts new §431.201 and §431.203, concerning Fire Investigation including new Subchapter B concerning fire investigator certification. Section 431.203 is adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5358). The change to §431.203(a) adds the word "must" to correct a grammatical error. Section 431.201 is adopted without changes and will not be republished.

The justification for this section is the requirements for fire investigator certification are simplified and provide for maintenance of investigator certification after employment.

New Subchapter B incorporates provisions previously in repealed Chapter 451 concerning fire cause and origin investi-

gation and redesignates the "fire cause and origin investigator" as simply "fire investigator" and is intended to apply to investigators who are not licensed peace officers. New §431.201 and §431.203 transfer existing language from repealed Chapter 451 and allows certified arson investigators no longer holding a current commission as a peace officer to maintain certification as a "fire investigator."

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

§431.203. *Minimum Standards for Fire Investigator Certification.*

(a) Training programs that are intended to satisfy the requirements of this section must meet the curriculum, competencies, and hour requirements of this section. All applicants for certification must meet the examination requirements of this section.

(b) In order to be certified by the commission as a Fire Investigator an individual must complete a commission approved basic fire investigation training program as specified in 431.3(b)(3) of this title (relating to Minimum Standards for Basic Arson Investigator Certification) and successfully pass the commission examination as specified in Chapter 439 of this title.

(c) A person who holds or is eligible to hold a certificate upon employment as a part-time fire investigator may be certified as a full-time fire investigator without meeting the applicable examination requirements.

(d) A person who holds or is eligible to hold a certificate as a Fire Investigator may be certified as an Arson Investigator by meeting the requirements of Chapter 431, Subchapter A, but shall not be required to repeat the applicable examination requirements.

(e) There are no higher levels of certification for the Fire Investigator.

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 435. Fire Fighter Safety

37 TAC §§435.1, 435.3, 435.5, 435.7

The Texas Commission on Fire Protection adopts the repeal of §§435.1, 435.3, 435.5, and 435.7, concerning fire fighter safety, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5359).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022(4), which provides the commission with authority to assist in performing staffing studies for fire departments; Texas Government Code, §419.040, which provides the commission with authority to approve standards for protective clothing used by fire protection personnel; Texas Government Code, §419.041, which provides the commission with authority to approve standards for self-contained breathing apparatus (SCBA); and Texas Government Code, §419.042, which provides the commission with authority to adopt standards for protective clothing and SCBA.

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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The Texas Commission on Fire Protection adopts new §§435.1, 435.3, 435.5, and 435.7, concerning fire fighter safety. Section 435.1 is adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5359). The change to §435.1(2)(E) adds the word "and" for clarity. Sections 435.3, 435.5, and 437.7 are adopted without changes and will not be republished.

The justification for this section is that public employees exposed to hazardous conditions from fire and other emergencies are adequately protected.

The new chapter includes sections pertaining to protective clothing, self-contained breathing apparatus, recommended safety standards, and fire department staffing studies. New §435.1 redefines personnel required to have protective clothing consistent with applicable National Fire Protection Association Standards. New §§435.3, 435.5, and 435.7 readopt existing language.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.042, which provides the commission with authority to adopt standards for protective clothing and SCBA.

§435.1. *Protective Clothing.*

The employing entity shall:

(1) purchase, provide, and maintain a complete set of protective clothing for all fire protection personnel who would be exposed to hazardous conditions from fire or other emergencies or where the potential for such exposure exists or provide an adequate clothing allowance and require the fire protection personnel to purchase and maintain a complete set of protective clothing. A complete set of protective clothing shall consist of garments, including bunker coats, bunker pants, boots, gloves, helmets, and protective hoods, worn by fire protection personnel in the course of performing fire-fighting operations;

(2) ensure that all protective clothing which are used by fire protection personnel assigned to fire suppression duties comply with the minimum standards of the National Fire Protection Association:

(A) the National Fire Protection Association standard applicable to protective clothing is the standard in effect at the time the entity contracts for new, rebuilt, or used protective clothing;

(B) an entity may continue to use protective clothing in use or contracted for before a change in the National Fire Protection Association standard, unless the commission determines that the protective clothing constitutes an undue risk to the wearer, in which case the commission shall order that the use be discontinued and shall set an appropriate date for compliance with the revised standard;

(C) fire fighter boots purchased or contracted for prior to May 16, 1988, are not required to meet the minimum standards for protective clothing;

(D) protective hoods purchased or contracted for prior to August 16, 1991, are not required to meet the minimum standards for protective clothing;

(E) protective clothing for proximity fire fighting purchased or contracted for prior to August 14, 1992, are not required to meet the standards for protective clothing; and

(3) maintain and provide upon request by the commission, a departmental standard operating procedure regarding the use of protective clothing during fire suppression operations.

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 437. Fees

37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15, 437.17

The Texas Commission Fire Protection adopts the repeal of §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15,

and 437.17, concerning fees, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5361).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.025, which provides authority to set a fee for the standards manual; §419.026, which provides authority to establish fees for certification and testing; and Texas Government Code, §419.034, which provide authority to collect fees for certificate renewal and proficiency testing.

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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37 TAC §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, 437.15

The Texas Commission on Fire Protection adopts new §§437.1, 437.3, 437.5, 437.7, 437.9, 437.11, 437.13, and 437.15 concerning fees, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5361).

Justification for this section is the consistent standards and fees for both paid and volunteer fire service personnel.

The new chapter includes sections concerning purpose and scope, fees for certification, renewal fees, standards manual fees, curriculum, manual fees, copying fees, and examination fees. New §437.1 concerning purpose and scope readopts existing language. New §437.3 certification fees eliminates unnecessary language listing each area of certification inasmuch as the same fee applies to all certificates issued by the commission whether the certificate holder is full-time, part-time, volunteer, or unaffiliated and clarifies the fees required for training facility certification. New §437.5 deletes language pertaining to inactive certificates and adds language concerning renewal of a certificate expired for less than one year. The section also establishes a procedure whereby the commission may consider requests for waiver of late fees. New §§437.7, 437.9, and 437.11 readopt existing language concerning manual and copying fees. New §437.13 simplifies the provisions concerning examination fees. New §437.15 establishes a fee of \$5.00 to recover the cost of International Fire Service Accreditation Congress seals issued by the commission.

No comments were received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.026, which provides the commission with authority to establish fees for certification and examinations.

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 439. Examinations for Certification

37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, 439.17

The Texas Commission on Fire Protection adopts the repeal of §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15, and 439.17, concerning examinations for certification, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5363).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), concerning basic certification examinations.

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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37 TAC §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, 439.15

The Texas Commission on Fire Protection adopts new §§439.1, 439.3, 439.5, 439.7, 439.9, 439.11, 439.13, and 439.15, concerning examinations for certification. Section 439.13 and §439.15 are adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5364). The changes to §439.13(b) and §439.15(a)(3) add language to clarify that continuing education training be conducted according to Chapter 441. A change to §439.15(a)(3) changes language to clarify assignment to include any type of fire protection duties. Sections 439.1, 439.3, 439.5, 439.7, 439.9, and 439.11 are adopted without changes and will not be republished.

The justification for this section is the elimination of unnecessary examination costs and an increase in the availability of certified fire protection personnel available for employment.

The chapter includes sections pertaining to general requirements, definitions, procedures, eligibility, grading, performance skill evaluation, proficiency testing, and testing for certification status. New §439.1 eliminates obsolete language pertaining to certified aircraft rescue fire fighting personnel applying for structure certification. New §439.3 simplifies the definition of a field examiner. New §439.5 concerning procedures adds language which pertains to application for testing at a certified volunteer training facility. New §439.7 allows the commission to retest an existing certificate holder as part of a disciplinary matter. New §439.9 readopts existing language pertaining to grading. New §439.11 clarifies the qualifications of an instructor for remedial training required for a second retest in a performance skills evaluation. New §439.13 conforms the requirements for proficiency examinations to statutory changes and provides a procedure for consideration of requests for waiver of examination requirements for certificates expired for more than one year. New §439.15 concerning testing for certification status outlines the type of programs considered which may be evaluated for equivalency to qualify for a commission examination.

Comments were received from Waco Fire Department.

The commentator stated the procedures for seeking accommodation under the Americans with Disabilities Act (ADA) should be set aside. The commission disagreed with the commentator for the reason that such procedures need not be set aside in agency rules. Compliance with ADA can and is accomplished in instruction packets for applicants.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032, concerning basic certification examinations.

§439.13. *Testing for Proof of Proficiency.*

(a) An individual whose certificate(s) has been expired for one year or longer may not renew the certificate or certificates that were previously held.

(b) The individual may obtain a new certificate or certificates in the discipline or disciplines which was previously held by passing a commission proficiency examination pertaining to the discipline or disciplines which was previously held and becoming certified within the time specified for that discipline or disciplines. The proficiency examination must be passed prior to assignment to fire suppression duties. If performance skills are part of the proficiency examination and it has been less than four years since the previously held certificate expired, the individual may be exempted from that portion of the examination if the individual can document twenty

hours of continuing education for each year since the expiration of the certificate. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).

(c) For the purposes of this section, the time that a person serves in the military who is called to active duty in accordance with applicable federal law or that a person serves in the state legislature who qualifies for legislative leave under the provisions of Texas Civil Statutes, Article 6252-4c, is not considered a break in service for any reason and the person is not required to complete the examination requirement upon return to employment to a fire protection personnel position in order to obtain a new certificate, provided that the individual must comply with the continuing education requirement applicable to the certificate previously held by the individual after the effective date of this rule except as provided by federal law.

(d) An individual or entity may petition the commission for a waiver of the examination required by this section if the person's certificate expired because of the individual or employing entity's good faith clerical error, or expired as a result of termination of the person's employment where the person has been restored to employment through a disciplinary procedure or a court action. All required renewal fees including applicable late fees and all required continuing education must be submitted before the waiver request may be considered.

(1) Applicants claiming good faith clerical error must submit a sworn statement together with any supporting documentation that evidences the applicant's good faith efforts to comply with commission renewal requirements and that failure to comply was due to circumstances beyond the control of the applicant.

(2) Applicants claiming restoration to employment as a result of a disciplinary or court action must submit a certified copy of the order restoring the applicant to employment.

§439.15. Testing for Certification Status.

(a) If an individual who has never held certification in a discipline defined in §421.5 of this title (relating to the definition of fire protection personnel), seeks certification in that discipline two years or longer after passing a commission examination pertaining to that discipline, the individual shall:

(1) complete all requirements and become certified by the commission within the time specified for that discipline; and

(2) successfully complete the current commission requirements for certification in that discipline; or

(3) pass a commission certification examination pertaining to that discipline. The certification examination for some disciplines consists of a written examination only, while the certification examination for other disciplines consists of both a written portion and a performance skills portion. In any case, all portions of an examination must be passed before the individual is considered to have passed the examination. The certification examination must be passed prior to assignment to fire protection duties. If it has been less than four years since an individual passed the performance skills portion of an examination pertaining to a discipline, the individual may be exempted from that portion of the examination if the individual can document twenty hours of continuing education for each year since the individual last passed the performance skills portion of an examination pertaining to the discipline. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on perfor-

mance skills. The training must be conducted as specified in Chapter 441 of this title (relating to Continuing Education).

(b) If an individual completes an approved training program that has been evaluated and deemed equivalent to a basic certification curriculum approved by the commission, such as an out-of-state or military training program or a training program administered by the State Firemen and Fire Marshals' Association of Texas, the individual must document equivalent training to that required by the commission for certification in the discipline in question, and pass a commission examination for certification status in order to become eligible for certification by the commission as fire protection personnel. If the individual is employed as fire protection personnel, then the examination for certification status must be passed prior to assignment.

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 441. Continuing Education

37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15

The Texas Commission on Fire Protection adopts the repeal of §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, and 441.15, concerning continuing education, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5368).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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37 TAC §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15, 441.17

The Texas Commission on Fire Protection adopts new §§441.1, 441.3, 441.5, 441.7, 441.9, 441.11, 441.13, 441.15, and 441.17, concerning continuing education. Section 441.5 and §441.15 are adopted with changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5369). The change to §441.5(d) adds language for clarity. The change to §441.5 also adds a new subsection (n) that clarifies the procedure of an individual certificate holder who is not employed by a regulated entity seeking to submit documentation for continuing education training. The change to §441.15 adds the word "as" for clarity. Sections 441.1, 441.3, 441.7, 441.9, 441.11, 441.13, and 441.17 are adopted without changes and will not be republished here.

The justification for this section is that the public is assured that persons holding hazardous materials technician certification maintain competency as well as individual certificate holders not employed by a fire department.

The chapter is comprised of sections concerning objectives, definitions, general requirements, and continuing education requirements for each category of certification. New §441.1 outlines the basic objective of continuing education. New §441.3 provides definitions for the chapter. New §441.5 adds language concerning continuing education for hazardous materials technician training and interactive computer-based training. The section also clarifies the continuing education exemption for illness or injury and adds continuing education requirements for individual certificate holders not affiliated with a department. New §441.7 deletes language that disallowed continuing education credit for certain subjects in the basic curriculum for structure fire protection personnel. New §441.9 concerning continuing education for aircraft rescue fire fighting personnel clarifies that continuing education must meet federal requirements even if it exceeds 20 hours. New §§441.11, 441.13, and 441.15 concerning continuing education for marine, fire inspector, and fire investigator fire protection personnel delete language that disallowed credit for certain subjects from the basic curricula. New §441.17 adds a requirement of ten hours of continuing education for hazardous materials technician.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which authorizes the commission to establish qualifications relating to continuing education or training programs.

§441.5. Requirements.

(a) Continuing education shall be required in order to renew certification which has a continuing education requirement stated in this chapter.

(b) The continuing education requirement for renewal of certification shall consist of a minimum of 20 hours of training to

be conducted during the certification period. Only 20 total hours of continuing education shall be required to renew all Texas Commission on Fire Protection certificates if any individual holds more than one certificate, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(c) Track A training must be conducted by a qualified or certified instructor. Interactive computer-based continuing education training that is supervised and verified by a certified instructor is acceptable.

(d) The continuing education program of a regulated entity must be administered by a certified instructor.

(e) No more than four hours per year in any one section of the appropriate chapter of the Commission Certification Curriculum Manual may be counted toward the 20-hour continuing education requirement for Track A.

(f) There shall be no "hour per subject limit" placed on Track B courses, except that emergency medical courses shall be limited to four hours per year.

(g) The administrative head of the department may select subject matter for continuing education appropriate for a particular discipline.

(h) The administrative head of the department must certify whether or not the individuals whose certificates are being renewed have complied with the continuing education requirements of this chapter on the certification renewal application. Unless exempted from the continuing education requirements, an individual who fails to comply with the continuing education requirements in this chapter shall be notified by the commission of the failure to comply.

(i) After notification from the commission of a failure to comply with continuing education requirements, an individual who holds a certificate is prohibited from performing any duties authorized by a required certificate until such time as the deficiency has been resolved and written documentation is furnished by the department head for approval by the commission, through its Fire Service Standards and Certification Division director. No person may assign duties or accept an assignment of duties in violation of this rule. Continuing education hours obtained to resolve a deficiency may not be applied to the continuing education requirements for the current certification period.

(j) Any person who is a member of a paid or volunteer fire department who is on extended leave for six months or longer because of illness or injury may be exempted from the continuing education requirement for the current renewal period. Such exemptions shall be reported by the head of the department to the commission at renewal time.

(k) Any individual who is not a member of a paid or volunteer fire department who is unable to perform work, substantially similar in nature as would be performed by fire protection personnel assigned to that discipline, may be exempted from the continuing education requirement for the current renewal period. Commission staff shall determine the exemption with documentation of the illness or injury and time frames provided by the individual.

(l) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a basic certificate not employed by a regulated entity must comply with the continuing education requirements for that discipline. The continuing education must be in subjects contained in the basic curriculum for the discipline. At least one-half of the continuing education must be hands-on performance skills

if performance skill objectives are part of the curriculum for the discipline. Only 20 total hours of continuing education for each certification period shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(m) In order to renew certification for any discipline which has a continuing education requirement stated in this chapter, an individual holder of a higher level certificate, not employed by a regulated entity, must comply with the continuing education requirements for that discipline. The continuing education may be either Track A or B Only 20 total hours of continuing education for each certification period shall be required to renew all certificates the individual holds, except as provided in §441.17 of this title (relating to Continuing Education for Hazardous Materials Technician).

(n) An individual certificate holder, not employed by a regulated entity, shall submit documentation of continuing education training at the time of renewal. An example of documentation of continuing education training may include, but not be limited to a Certificate of Completion, a college or training facility transcript, a fire department training roster, etc. Commission staff will review and may approve or disapprove such documentation of training in accordance with applicable commission rules and/or procedures. The training for a resident of Texas at the time the continuing education training is conducted shall be administered by a commission instructor, commission certified training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The training for a nonresident of Texas, shall be delivered by a state fire academy, a fire department training facility, an accredited institution of higher education, or a military or nationally recognized provider of training. The individual must submit training documentation to the commission for evaluation of the equivalency of the training required by this chapter. The individual certificate holder is responsible for maintaining all of his/her training records.

§441.15. Continuing Education for Arson Investigator or Fire Investigator.

(a) Continuing education will be required for personnel certified as arson investigation or fire investigation personnel.

(b) Subjects selected to satisfy the continuing education requirement may be selected from either Track A, Track B, or a combination of the two.

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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T.R. Thompson

General Counsel

Texas Commission on Fire Protection

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Chapter 443. Certification Curriculum Manual

37 TAC §§443.1, 443.3, 443.5, 443.7, 443.9

The Texas Commission on Fire Protection adopts the repeal of §§443.1, 443.3, 443.5, 443.7, and 443.9, concerning the

certification curriculum manual, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5370).

The justification for this section is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel.

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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The Texas Commission on Fire Protection adopts new §§443.1, 443.3, 443.5, 443.7, and 443.9, concerning the certification curriculum manual, without changes to the text published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5371).

The justification for this section is that the curriculum approval process is consistent with statutory changes made during the 1997 legislative session.

The new chapter contains sections pertaining to approval by the Fire Fighter Advisory Committee, approval by the commission, effective date of curricula required by law or rule, effective date of voluntary curricula, and compliance with National Fire Protection Association (NFPA) standards. The new §§443.1, 443.3, 443.5, 443.7, and 443.9 readopt existing language concerning procedures for adoption of curricula but reference the new Fire Fighter Advisory Committee created by 1997 legislative changes which combined the former Fire Protection Personnel Advisory Committee and the Volunteer Fire Fighter Advisory Committee. The new sections require approval by the advisory committee and commission, with required curricula going into effect the following January unless a safety consideration is involved. Voluntary curricula are effective on the date specified by the commission. The rules also require review and updating of curricula to meet new or revised NFPA professional qualification standards. There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.022,

which provides the commission with authority to establish minimum training standards for fire protection personnel.

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 445. Administrative Inspections and Penalties

37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19, 445.21

The Texas Commission on Fire Protection adopts the repeal of §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19, and 445.21, concerning administrative inspections and penalties, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5372) and will not be republished.

The justification for these sections is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repealed sections.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; and Texas Government Code, §419.906, which provides the commission with the authority to impose administrative penalties for violations of Chapter 419 or commission rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter A. Paid Fire Department Inspections

37 TAC §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, 445.19

The Texas Commission on Fire Protection adopts new §§445.1, 445.3, 445.5, 445.7, 445.9, 445.11, 445.13, 445.15, 445.17, and 445.19, concerning administrative inspections and penalties, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5373) and will not be republished.

The justification for these sections is that there will be a more efficient administration of the commission's inspection program.

The chapter includes Subchapter A applicable to inspection of departments with paid fire protection personnel. New §445.1, concerning entity inspections, §445.5 concerning duty to comply, §445.17, concerning liability for violations, and §445.19 concerning inspections forms readopt existing language. New §445.3 clarifies the right of access of commission representatives to make inspections of regulated entities. New §445.7 streamlines the procedures for determining major and minor violations to allow more administrative discretion in the conduct of inspections. New §445.9 and §445.11 streamline the procedure for responding to violations and allow for the probation of administrative penalties. New §445.13 deletes notice requirements that conflicted with the Administrative Procedure Act. New §445.15 changes language to allow agency discretion in initiating disciplinary proceedings.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; Texas Government Code, §419.036, concerning disciplinary actions; and Texas Government Code, §419.906, which provides the commission with the authority to impose administrative penalties for violations of chapter 419 or commission rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Subchapter B. Volunteer Fire Department Inspections

37 TAC §§445.201, 445.203, 445.205, 445.207

The Texas Commission on Fire Protection adopts new §§445.201, 445.203, 445.205, and 445.207, concerning administrative inspections and penalties, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5375) and will not be republished.

The justification for these sections is that consolidation of inspections procedures for paid and volunteer departments provides better access to the standards for the public.

The new chapter includes Subchapter B concerning volunteer fire department inspections. New Subchapter B provides for inspections of volunteer fire departments. The new chapter incorporates sections from repealed volunteer rules to provide for voluntary inspections. New §445.201 allows a volunteer fire department to request inspection for compliance with voluntary standards pertaining to protective clothing, self-contained breathing apparatus, training facilities, and training records. New §445.203 provides for a report of the inspection. New §445.205 provides for administrative penalties only for intentional falsification of records. New §445.207 provides for a certificate of compliance upon successful completion of an inspection.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.027, which provides the commission with authority to inspect each facility conducting training for fire protection personnel and recruits and fire departments for compliance with statutes and commission rules; Texas Government Code, §419.036, concerning disciplinary actions; and Texas Government Code, §419.906, which provides the commission with the authority to impose administrative penalties for violations of chapter 419 or commission rules.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Chapter 447. Part-Time Fire Protection Employee
37 TAC §§447.1, 447.3, 447.5

The Texas Commission on Fire Protection adopts the repeal of §§447.1, 447.3, and 447.5, concerning minimum standards for part-time fire protection employees, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5376) and will not be republished.

The justification for these sections is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection personnel.

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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The Texas Commission on Fire Protection adopts new §§447.1, 447.3, and 447.5, concerning part-time fire protection employees, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5377) and will not be republished.

The justification for these sections is that the simplified and consolidated format will provide more consistency in application standards to full-time and part-time fire protection employees.

New §447.1 concerning standards for part-time fire protection employees removes the listing of difference categories of certifications and refers simply to disciplines that have a commission approved curricula. Part-time employees must meet the same training and certification requirements as full-time fire protection personnel. New §447.3 concerning standards for advanced levels of part-time certification apply the same education and experience requirements applicable to the same level of full-time certification. New §447.5 readopts the same statutory limits on the number of permissible hours of work for part-time fire protection employees.

There were no comments received on the proposed new sections.

The new sections are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.0321, which provides that the commission shall create a separate certification class for part-time fire protection employees.

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 451. Fire Cause and Origin Investigator

37 TAC §451.1, §451.3

The Texas Commission on Fire Protection adopts the repeal of §451.1 and §451.3, concerning minimum standards for fire cause and origin investigator certification, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5378) and will not be republished.

The justification for these sections is that obsolete language will be replaced with new sections that implement legislative changes.

The subject matter of the repealed sections will be replaced by proposed new sections dealing with the same subject.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administrative of its powers and duties; and Texas Government Code, §419.022, which provides the commission with authority to establish minimum training standards for fire protection personnel in advanced or specialized fire protection personnel positions.

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 471. Standards for Volunteer Certification

37 TAC §§471.1, 471.3, 471.5, 471.7

The Texas Commission on Fire Protection adopts the repeal of §§471.1, 471.3, 471.5, and 471.7, concerning standards for volunteer certification, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5379) and will not be republished.

The justification for these repeals is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 472. Volunteer Certification Curriculum Manual

37 TAC §§472.1, 472.3, 472.5, 472.7, 472.9

The Texas Commission on Fire Protection adopts the repeal of §§472.1, 472.3, 472.5, 472.7, and 472.9, concerning the volunteer certification curriculum manual, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5379) and will not be republished.

The justification for these repeals is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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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General Counsel

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Chapter 473. Volunteer Fire Fighter

37 TAC §§473.1, 473.3, 473.5, 473.7, 473.9

The Texas Commission on Fire Protection adopts the repeal of §§473.1, 473.3, 473.5, 473.7, and 473.9, concerning minimum standards for volunteer fire fighter, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5380) and will not be republished.

The justification for these repeals is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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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T.R. Thompson

General Counsel

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Chapter 475. Volunteer Fire Fighter Instructor and Instructor Training

37 TAC §§475.1, 475.3, 475.5, 475.7, 475.9, 475.11

The Texas Commission on Fire Protection adopts the repeal of §§475.1, 475.3, 475.5, 475.9, and 475.11, concerning minimum standards for volunteer fire fighter instructor certification and training, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5380) and will not be republished.

The justification for these repeals is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 476. Volunteer Fire Investigator

37 TAC §§476.1, 476.3, 476.5, 476.7, 476.9

The Texas Commission on Fire Protection adopts the repeal of §§476.1, 476.3, 476.5, 476.7, and 476.9, concerning minimum standards for volunteer fire investigator, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5381) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 477. Volunteer Fire Fighter Training Facilities

37 TAC §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, 477.13

The Texas Commission on Fire Protection adopts the repeal of §§477.1, 477.3, 477.5, 477.7, 477.9, 477.11, and 477.13, concerning standards for volunteer fire fighter training facilities, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5381) and will not be republished.

The justification for the repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 478. Volunteer Fire Inspector

37 TAC §§478.1, 478.3, 478.5, 478.7, 478.9

The Texas Commission on Fire Protection adopts the repeal of §§478.1, 478.3, 478.5, 478.7, and 478.9, concerning minimum standards for volunteer fire inspector, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5382) and will not be republished.

The justification for the repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 479. Examinations for Volunteer Fire Fighter Certification

37 TAC 479.1, 479.3, 479.5, 479.7, 479.9, 479.11, 479.13

The Texas Commission on Fire Protection adopts the repeal of §§479.1, 479.3, 479.5, 479.7, 479.9, 479.11, and 479.13, concerning examinations for volunteer fire fighter certification, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5382) and will not be republished.

The justification for the repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 481. Volunteer Fire Fighter Fees

37 TAC §§481.1, 481.3, 481.5, 481.7, 481.9, 481.11

The Texas Commission on Fire Protection proposes the repeal of §§481.1, 481.3, 481.5, 481.7, 481.9, and 481.11, concerning volunteer fire fighter certification fees, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5383) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 483. Volunteer Fire Fighter Safety

37 TAC §§483.1, 483.3, 483.5

The Texas Commission on Fire Protection adopts the repeal of §§483.1, 483.3, and 483.5, concerning volunteer fire fighter safety, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5383) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 485. Volunteer Fire Fighter Continuing Education

37 TAC §§485.1, 485.3, 485.5, 485.7, 485.9, 485.11

The Texas Commission on Fire Protection adopts the repeal of §§485.1, 485.3, 485.5, 485.7, 485.9, and 485.11, concerning volunteer fire fighter continuing education, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5384) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 487. Eligibility for Volunteer Fire Fighter Certification As Fire Protection Personnel

37 TAC §487.1, §487.3

The Texas Commission on Fire Protection adopts the repeal of §487.1 and §487.3, concerning eligibility for volunteer fire fighter certification as fire protection personnel, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5384) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 489. Volunteer Fire Department Inspections

37 TAC §§489.1, 489.3, 489.5, 489.7, 489.9

The Texas Commission on Fire Protections adopts the repeal of §§489.1, 489.3, 489.5, 489.7, and 489.9, concerning volunteer fire department inspections, without changes to the proposed text as published in the May 22, 1998, issue of the *Texas Register* (23 TexReg 5385) and will not be republished.

The justification for this repeal is the removal of obsolete and unnecessary language.

The subject matter of the repealed sections has been replaced by other language dealing with the same subject matter.

There were no comments received on the proposed repeals.

The repeals are adopted under Texas Government Code, §419.008, which provides the Texas Commission on Fire Protection with authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.071, which provides the commission with authority to establish voluntary certification standards for volunteer fire fighters.

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 October 8, 1998.

TRD-9815748

T.R. Thompson

General Counsel

Texas Commission on Fire Protection

Effective date: November 1, 1998

Proposal publication date: May 22, 1998

For further information, please call: (512) 918-7189



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

Chapter 69. Contracted Services

Subchapter L. Contract Administration

40 TAC §69.212

The Texas Department of Human Services (DHS) adopts new §69.212 without changes to the proposed text published in the September 4, 1998, issue of the *Texas Register* (23 TexReg 9010). The text will not be republished.

Justification for the new section is to protect the public by requiring DHS contractors to prepare for Year 2000 eventualities.

The new section will function by requiring DHS contractors to make reasonable efforts to ensure against any problems that may result from Year 2000 computer problems.

The department received no comments regarding the proposal.

The new section is adopted under the Human Resources Code, Title 2, Chapter 22, which authorizes the department to administer public assistance programs.

The new section implements the Human Resources Code, §§22.001- 22.033.

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 October 6, 1998.

TRD-9815593

Glenn Scott

General Counsel, Legal Services

Texas Department of Human Services

Effective date: November 1, 1998

Proposal publication date: September 4, 1998

For further information, please call: (512) 438-3765



Part XII. Texas Board of Occupational Therapy Examiners

Chapter 362. Definitions

40 TAC §362.1

The Texas Board of Occupational Therapy Examiners adopts amended §362.1, concerning Definitions, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8369) and will not be republished.

The proposed amendment is being adopted to clarify definitions concerning the practice and regulation of Occupational Therapy.

This amended section does the following: It clarifies the definition of Occupational Therapy, provides new and modified definitions related to a jurisprudence examination for applicants and licensees, provides a new definition of Occupational Therapy plan of care, and modifies various definitions concerning supervision of Certified Occupational Therapy Assistants (COTAs), Licensed Occupational Therapy Assistants (LOTAs), and temporary licensees.

Comments were received regarding the proposed amendment: Those who commented on the definition of occupational therapy supported the clarification of the definition of Occupational Therapy, as improving understanding of the nature of OT services. Those who commented on the Jurisprudence Examination supported the requirement, as improving licensee understanding and awareness of the rules. Comments on the changes in supervisory requirements were mixed. About half of individuals who commented on the supervisory changes supported the changes as ensuring that staff received adequate supervision. Others opposed the changes in supervisory definitions making it more difficult and costly for COTAs or LOTAs to work in certain settings, such as home health.

Comments for and against the rule were made by individuals.

This agency responds that the OTR or LOT is responsible for all services and may only delegate to a COTA or LOTA those tasks

that are within the capability of that COTA or LOTA (see §372.1, concerning Supervision). This responsibility is consistent with normal expectations in health professions. The definition of general supervision in this chapter provides detail on the nature of the supervision necessary for an OTR or LOT to adequately meet their responsibilities for supervision. If the OTR or LOT never sees the COTA or LOTA working with patients, the OTR or LOT cannot know if treatment is being carried out correctly or that tasks are within the capabilities of that particular COTA or LOTA. On the other hand, the removal of the requirement for weekly face to face contact between the OTR or LOT and the COTA or LOTA allows for greater flexibility in planning supervisory visits. In sum, the new rules increase flexibility while providing better public protection.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, 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.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815534

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 25, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



Chapter 364. Requirements for Licensure

40 TAC §364.1

The Texas Board of Occupational Therapy Examiners adopts an amendment to §364.1 concerning, Requirements for Licensure, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8371) and will not be republished.

The proposed amendment is being adopted to ensure that licensees are aware of the rules under which they practice.

This amended section adds a requirement that applicants for licensure must complete and pass a board-prepared Jurisprudence Examination on the OT Act and rules.

Comments were received regarding the proposed amendment: comments supported the Jurisprudence Examination requirement, as improving licensee understanding and awareness of the rules.

Comments for the rule were made by individuals.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, 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.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815533

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



Chapter 370. License Renewal

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners adopts amended §370.1, concerning License Renewal, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8372) and will not be republished.

The proposed amendment is being adopted to ensure that licensees are aware of the rules under which they practice, describe procedures and eliminate obsolete language.

This amended section does the following: It removes obsolete language concerning the transition from annual to biennial renewals, describes how the requirement for a jurisprudence examination will be implemented and clarifies that all portions of a renewal application must be postmarked before the expiration of a license to avoid a late fee.

Comments were received regarding the proposed amendment: comments supported the Jurisprudence Examination requirement, as improving licensee understanding and awareness of the rules.

Comments for the rule were made by individuals.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, 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.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815531

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

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Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



Chapter 372. Provision of Services

40 TAC §372.1

The Texas Board of Occupational Therapy Examiners adopts amended §372.1, concerning Provision of Services, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8375) and will not be republished.

The proposed amendment is being adopted to clarify requirements for planning, delivering and discharging patients from OT services.

This amended section includes: (1) A requirement that the OT plan of care must be prepared by an OTR or LOT. (2) Specifies general parameters for discharging patients. (3) Simplifies statements about the role of the COTA or LOTA.

No comments were received regarding the proposed amendment.

The amendment is adopted under the Occupational Therapy Practice Act, Texas Civil Statutes, Article 8851, 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.

Filed with the Office of the Secretary of State on October 5, 1998.

TRD-9815529

John P. Maline

Executive Director

Texas Board of Occupational Therapy Examiners

Effective date: October 25, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 305-6900



TITLE 43. TRANSPORTATION

Part II. Texas Turnpike Authority Division of the Texas Department of Transportation

Chapter 53. Contracting and Procurement Procedures

The Board of Directors (the "Board") of the Texas Turnpike Authority Division (the "Authority") of the Texas Department of Transportation adopts new §§53.1-53.12, 53.20-53.30, 53.50-53.54, and 53.60-53.71, concerning contracting and procurement procedures for turnpike improvement projects and architectural and engineering services, without changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8387).

These rules also set forth procedures for addressing contract disputes, as well as the Authority's policies and procedures for meeting state and federal requirements for maximizing opportunities for participation by disadvantaged business enterprises (DBE) and historically underutilized businesses (HUB) in Authority contracts.

Transportation Code, §361.042, requires the Authority to adopt rules for the regulation of its affairs and the conduct of its business and, further, to do all things necessary or appropriate

to carry out the powers granted to the Authority in Transportation Code, Chapter 361 (the "Turnpike Act"). Transportation Code, §361.231 requires the Authority to award contracts and assume the same duties as the Texas Department of Transportation under Transportation Code, §§223.001-223.007, 223.009 and 223.010. Transportation Code, §361.049 requires the Authority to adopt rules containing policies and procedures for soliciting proposals for contracts for professional consulting services. Transportation Code, §361.050, requires the Authority to set annual goals for awarding of contracts to DBEs; attempt to identify DBEs that can provide supplies, materials, equipment or services to the Authority; and generally to give DBEs full access to the Authority's contract bidding processes.

In compliance with these statutory requirements the Board adopts new sections concerning procurement procedures for turnpike improvement contracts, contracting for architectural and engineering services, procedures for resolving contract disputes and determining when debarment is warranted, and policies and procedures concerning DBEs and HUBs.

Sections 53.1-53.12, which comprise Subchapter A, address contracting for turnpike improvement contracts. Such contracts involve construction, maintenance, and building contracts for turnpike projects as defined in §361.001(4) of the Turnpike Act. The contracting process and procedures set forth in these rules are intended to provide for a fair and efficient means of letting Authority contracts so that Authority expenditures are made economically and for work performed by qualified contractors. The Authority believes that following these procedures will result in the efficient utilization of public funds for turnpike improvement projects. These procedures are also consistent with the requirements of Transportation Code, §361.231.

Section 53.1 sets forth the general purpose of the rules in this subchapter, which is to prescribe the policies and procedures governing bidder qualification, bidding, awards, and execution of contracts entered into pursuant to the Texas Transportation Code. Section 53.2 sets forth definitions utilized throughout the subchapter relating to contracting for turnpike improvement contracts.

Section 53.3 addresses qualification of bidders and registration of subcontractors. The Texas Department of Transportation (TxDOT) currently has procedures in place (see, e.g., 43 TAC §9.12) which govern qualification of bidders and registration of subcontractors for construction and maintenance contracts. This section indicates that the Authority will rely upon the qualification and registration process administered by TxDOT, so that it will utilize the list of qualified bidders and registered contractors maintained by TxDOT in determining whether bidders or subcontractors are eligible to bid on, or receive, turnpike improvement contracts. This is intended to avoid unnecessary duplication in effort between the Authority and TxDOT and to more efficiently utilize the resources of the Authority.

Section 53.4 prescribes the procedures for providing notice to interested parties of letting of contracts or issuance of proposals for turnpike improvement contracts. Interested parties who wish to receive notification of such contracts can notify the Authority pursuant to this rule. The Authority reserves the right to impose a fee for the cost of administration of the mailing list. This rule also sets forth the procedures for notification of when and where contracts will be let and bids will be opened, and calls for publication of that information in certain periodicals. The rule further sets forth the content of proposal forms issued

by the Authority, as well as the required form for requests for proposal forms submitted to the Authority by interested parties. The rule prescribes the procedures for issuance of a proposal form for construction and maintenance contracts (which will vary depending on the financial magnitude of the project), as well as for Authority building contracts.

Section 53.5 sets forth procedures for delivering of bids and specific requirements concerning the form in which bids must be submitted. The rule also describes the content of proposals submitted to the Authority, and requires the inclusion of a proposal guaranty in a specified form. The rule requires that a certification be submitted for those turnpike project improvement contracts financed, in part, by federal funds, which certification shall describe a variety of information concerning any suspension, debarment, voluntary exclusion, or ineligibility determination actions by an agency of the federal government, as well as other similar information for the bidder and individuals or companies associated with the bidder. That information may result in rejection of a bid or disqualification of a bidder.

Section 53.6 sets forth procedures for opening and reading of bids (which shall be done in the City of Austin), and the circumstances under which proposals will not be accepted by the Authority or read and considered in the procurement process. The rule also sets forth procedures for changing of bids prior to bid openings and the process for withdrawal of a bid.

Section 53.7 specifies procedures for tabulating bids received by the Authority pursuant to Subchapter A. The rule specifies how total bid amounts for each bidder will be determined, the primary documents to be considered in determining a bid amount, and how certain discrepancies in information submitted will be resolved.

Section 53.8 sets forth procedures concerning awarding of contracts and the circumstances under which all bids may be rejected. This rule also addresses the treatment afforded unbalanced bids and the Authority's policy of awarding a contract pursuant to these procedures to the lowest bidder (provided the Authority does not reject all bids). The rule contains a description of circumstances under which the Authority will not award a contract to a nonresident bidder consistent with Texas Government Code, Chapter 2252, Subchapter A and also clarifies that contracts with an engineer's estimate of less than \$300,000 may be awarded or rejected by the Authority's chief administrative officer (the "Director") under other provisions of this rule.

Section 53.9 sets forth required procedures after a contract has been awarded. Successful bidders must execute and furnish a contract to the Authority within 15 days of receiving written notification of the award of a contract, and must include with the contract certain specified items (such as a performance bond and a certificate of insurance). This rule also details procedures for handling of proposal guaranties, return of proposal guaranties to unsuccessful bidders, and retention of proposal guaranties as liquidated damages under certain circumstances.

Section 53.10 addresses conditions and procedures for awarding turnpike improvement contracts under certain emergency conditions. The rule provides for the expedited award of contracts to meet emergency conditions, and describes procedures for, and the conditions under which, the existence of an emergency will be determined. The rule specifies that to be eligible to bid on emergency projects contractors must be included on the prequalified bidders list maintained pursuant to the rules of

TxDOT, or must complete and submit a bidder's questionnaire form to the Authority.

Section 53.11 provides authorization for turnpike improvement contracts to allow for partial payments. For construction and preventative maintenance contracts, partial payments may be made of an amount not exceeding 95% of the value of the work done, with the Authority to retain 5.0% of the contract price until all of the work has been completed and accepted. No retainage will be held on routine maintenance and professional services contracts.

Section 53.12 requires successful bidders under the procedures set forth under subchapter A to comply with the Authority's rules concerning its DBE/HUB program.

Subchapter B is comprised of §§53.20-53.30, and addresses contracting for architectural and engineering services. The rules are necessary to assure that the Authority follows a fair and efficient process which will enable it to procure these important professional services from qualified firms and individuals. Architectural and engineering services are essential to the Authority's work, and high quality services are essential to maximizing the degree of safety for the traveling public using turnpike project facilities. These rules are also consistent with the intent and requirement of Transportation Code, §361.049 that the Authority adopt rules concerning the procurement of professional consulting services.

Section 53.20 identifies the purpose of the rules in Subchapter B, which, in general, is to establish standard procedures for selection and contract management for architectural and professional engineering services in compliance with the Professional Services Procurement Act, Texas Government Code, Chapter 2254, A.

Section 53.21 contains the definitions relevant to the rules contained in this subchapter.

Section 53.22 describes the procedures for preparation of a notice of intent to seek architectural or professional engineering services (or both), publication of such notice in the *Texas Register*, and submission by interested parties of a letter of request asking for a copy of a detailed RFP which is to be referenced in the notice of intent.

Section 53.23 identifies the items which may be included in an RFP, and requires that written responses to an RFP be filed with the Authority and be received by the date, time and place specified in the RFP.

Section 53.24 provides for the formation of a consultant selection team which will be responsible for reviewing proposals submitted by interested parties.

Section 53.25 describes certain of the criteria which the consultant selection team ("CST") will consider in evaluating proposals received in response to RFPs. This rule allows for the CST to select a short list of providers with which further interviews will be conducted, but identification of a short list is not required.

Section 53.26 discusses the conduct of interviews with providers on a short list (if any), and the general structure and purpose of such interviews.

Section 53.27 describes the selection of a provider subsequent to the interviews conducted by the CST (if any), and notification to be given to the selected provider as well as those not selected. The rule also specifies that after selection the Director

or their designee will engage in negotiations with the selected provider to develop a contract for the provision of the requested services. Certain items which may be included in the contract are described in the rule, and the rule specifies that the selected provider must return an executed contract within 35 working days from the date of notification, provided that the Director may grant one or more 30-day extensions. The rule also directs that if the Authority is unable to successfully negotiate a contract with the selected provider, negotiations with that provider shall end and negotiations shall, upon written approval of the Director, begin with the next ranked provider as determined by the CST.

Section 53.28 details procedures for contract management. Prime providers are required to perform at least 30% of the contracted work with their own work force, and no subcontractor may perform a higher percentage of the work than the prime provider. The rule describes the content of subcontracts and conditions under which subcontractors may be utilized, and further describes management of ongoing work, prerequisites to commencement of work, conditions for suspension of work, payment on engineering contracts, performance of interim audits, conditions under which supplemental agreements will be needed, correction of errors and omissions by providers, procedures for contract closeout, and provider performance evaluations to be performed periodically.

Section 53.29 describes the three types of contract selections the Authority will perform, being individual contract selection, multiple contract selection (derived from one notice of intent and detailed RFP) and emergency contract selection.

Section 53.30 requires that providers under contracts awarded pursuant to the rules in Subchapter B must comply with the Authority's DBE program concerning maximization of opportunities for DBEs and HUBs.

Subchapter C is comprised of §§53.50-53.54, which address contract disputes and debarment. These provisions are necessary for the Authority to be able to resolve potential disputes with contractors and service providers in a fair, efficient and economic manner. They are also intended to give aggrieved parties a fair and full opportunity to present their claims to the Authority. Debarment procedures are necessary to assure that the Authority is contracting with the highest quality providers and those who are free from indications that their work or conduct is not trustworthy.

Section 53.50 contains definitions relevant to the contract claim procedures, and sets forth the composition and functions of a contract claim committee. The contract claim committee is to gather information, study, and meet informally with contractors, if requested, to resolve disputes that may exist between the Authority and the contractor. The committee is authorized to secure reports and recommendations from responsible Authority employees and to afford the contractor an opportunity to meet informally to discuss the disputed matters and to present relevant information to the committee. The committee chairman is to provide written notice of the committee's proposed disposition of the claim to the contractor, and if such proposed disposition is agreed to by the contractor the agreed disposition is to be forwarded to the Director for a final order on the claim. If the contractor is dissatisfied with the proposal of the committee, the contractor may petition for a formal administrative hearing to litigate the claim pursuant to provisions of the Administrative Procedure Act, Chapter 2001 of the Texas Government Code.

Section 53.51 sets forth the Authority's right to maintain surveillance of the equal opportunity performance of contractors and subcontractors with regard to certain turnpike projects. Nothing in the rules is intended to relieve contractors and subcontractors of their own obligation to assure that employment practices are conducted without discrimination and that they have implemented acceptable affirmative action plans.

Section 53.52 sets forth the procedures for debarment of a contractor, and contains the definitions relevant to debarment proceedings. The rule sets forth the reasons that a contractor or its affiliates may be debarred from bidding on, or entering into, contracts let by the Authority, from participating as a subcontractor on any such contracts, or from supplying materials or equipment to be used in the construction or maintenance of part of a turnpike project. The rule also contains a provision allowing a contractor a hearing prior to its debarment, which, absent an agreement to the contrary between the Authority and the contractor, shall be conducted pursuant to the Administrative Procedure Act, Texas Government Code, Chapter 2001. The rule sets out procedures for reinstatement of debarred contractors, as well as additional factors considered in debarment and reinstatement decisions. Finally, the rule contains additional guidance concerning debarment and reinstatement, including requirements that contractors notify the Authority in the event of a conviction or debarment in connection with a bidding crime in any jurisdiction, and specifies that illegal or improper conduct of an individual may be imputed to a firm with which they are associated. Debarment of a contractor does not affect their contractual obligations to the state for services already contracted for by the Authority.

Section 53.53 contains procedures and definitions relevant to suspension of a contractor. The rule contains conditions under which a contractor or its affiliates may be suspended from bidding on or contracting for turnpike project contracts, from participating as a subcontractor under such contracts, or from supplying materials or equipment to be used in construction or maintenance of turnpike projects. The rules specify that suspension shall remain in effect until cancellation, or until the occurrence of other specified events, and provides a right to a hearing concerning suspension which shall be conducted in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001. Suspensions may be lifted, modified or abated if it is in the public interest to do so. The rule additionally sets out a nonexclusive list of factors which may be considered in suspension decisions, including mitigating circumstances.

Section 53.54 sets forth supplemental procedures for suspension or debarment of contractors, which provide conditions under which the Authority may suspend or debar a contractor and its affiliates in addition to those set forth in the preceding rules. Specifically, contractors may be suspended in the event of indictment of a contractor on a charge of a bidding crime (which suspension shall remain effect until final resolution of the criminal charges). Debarment may also result from discovery of evidence relating to a bidding crime.

Subchapter D is comprised of §§53.60-53.71, which contain rules and information concerning the Authority's DBE/HUB programs. Such programs are required under provisions of state and federal law.

Section 53.60 sets forth the purpose of Subchapter D, which is to establish the policies and procedures to implement the

Authority's DBE and HUB programs in compliance with the certain provisions of state and federal law.

Section 53.61 contains definitions relevant to the Authority's DBE/HUB programs.

Section 53.62 sets forth the Authority's policy that DBEs and HUBs shall have maximum opportunity to participate in performance of contracts; that all necessary and reasonable steps will be taken to ensure that DBEs and HUBs have maximum opportunity to compete for and perform contracts and subcontracts; and that the Authority prohibits discrimination on the basis of race, color, national origin, or gender in the award and performance of contracts.

Section 53.63 notes that the DBE program is applicable to all Authority contracts and purchases funded in whole, or in part, with federal funds received from the United States Department of Transportation through the Federal Highway Administration, Federal Transit Administration, or the Federal Aviation Administration. The Authority's HUB program is applicable to all contracts and purchases funded entirely with state and local funds.

Section 53.64 refers to the Authority's DBE and HUB goals. The rule notes that TxDOT periodically establishes overall annual DBE and HUB participation goals and publishes such goals in the *Texas Register* and other media. This rule authorizes the Authority to rely upon and adopt TxDOT's annual DBE and HUB participation goals as its own, or enables the Authority to establish its own goals. In the event the Authority desires to establish its own goals, the DBE goals shall be consistent with federal requirements of the U.S. Department of Transportation and be compatible with other applicable state and federal laws, and the HUB goals shall be consistent with those of the General Services Commission and as set forth in the Texas Administrative Code. Should the Authority fail to establish its own goals, its goals shall be presumed to be the same as those of TxDOT. The rule further requires that individual contract goals be established by the Authority to achieve the overall goals, and that individual contracts having potential for DBE/HUB participation shall be assigned participation goals based on the availability of qualified contractors, work site location, dollar value of the contracts, and the type of work items specified in the contract. The rule sets forth that the Authority will assign individual contract goals for DBE participation in turnpike project contracts, building construction and maintenance, professional services, private consultant services, and purchasing contracts, while HUB goals for individual contracts will be determined pursuant to rules of the General Services Commission as set forth at 1 TAC Code §111.13.

Section 53.65 sets forth the Authority's obligation to make a good faith effort to meet or exceed the annual DBE and HUB goals established. The rule also sets forth procedures for contractors documenting steps taken in good faith to obtain DBE or HUB participation where required when the specific contract goals are not being met. The Authority will then consider the efforts taken by the contractor to meet the DBE/HUB requirements.

Section 53.66 and §53.67 address DBE and HUB certification. For DBE certification, the rules provide that the Authority will rely upon TxDOT's procedures for certification, and that valid certification by TxDOT will be considered valid certification for Authority contracting purposes. Section 53.67 recognizes that TxDOT and the General Services Commission operate under a reciprocal certification program, and further that the General

Services Commission maintains a directory of certified HUBs. The Authority will rely on the procedures of TxDOT and the General Services Commission for agency certification, and valid and current HUB certification by the General Services Commission or TxDOT shall be considered valid certification for Authority contracting purposes.

Section 53.68 details contract compliance requirements. The rule sets forth, in general, contract provisions applicable to contracts which include DBE/HUB goals, as well as provisions for contracts which do not include specific goals. The rule requires contractors to designate an employee as a DBE/HUB contact person, who shall be responsible for submitting reports, maintaining records, and documenting good faith efforts to use DBEs and HUBs pursuant to the Authority's rules. The rule further sets forth requirements that must be satisfied by the contractor unless the contractor is, itself, a DBE or HUB, and details reporting requirements, credits which shall be given for expenditures, use of DBE/HUB contractors and subcontractors, subcontracting by DBE and HUB contractors or subcontractors, utilization of equipment, requirements for maximization of opportunities for DBEs/HUBs to perform work by not creating unnecessary barriers or artificial requirements, substitutions for DBE/HUBs, the conduct of compliance conferences, sanctions for failing to comply with contract requirements, and rights to appeal of sanctions.

Section 53.69 provides procedures for filing of complaints related to alleged discrimination or violation of the DBE program, as well as claims for additional compensation. The rule also provides for filing of written protests with the Director by firms not selected to receive a contract offered by the Authority, as well as procedures for processing, determining, and appealing such complaints.

Section 53.70 requires the Authority to adopt policies and guidelines for investigation of complaints unresolved through other means as provided in Subchapter D. Such policies and guidelines shall only govern internal procedures of the Authority. Section 53.70 also sets forth conditions under which aggrieved persons or businesses may request formal investigations into a protest, complaint, or dispute.

Section 53.71 deals with appeals to the U.S. Department of Transportation and appeals to the Authority, and specifically details the process for presenting appeals to the Authority, including appointment of a committee, matters reviewed by the committee, and notification of findings of the review to the complainant.

No oral or written comments were received on the proposed new sections.

Subchapter A. Turnpike Project Improvement Contracts

43 TAC §§53.1–53.12

The new sections are adopted under Transportation Code, §361.042, which requires the Board to adopt rules for the regulation of its affairs and the conduct of its business, as well as under Transportation Code, §361.231, concerning contract awards and obligations assumed; §361.049, regarding procurement of professional consulting services; and §361.050, relating to maximization of opportunities for DBEs and HUBs.

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 12, 1998.

TRD-9815931

James W. Griffin, P.E.

Interim Director

Texas Turnpike Authority Division of the Texas Department of Transportation

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For further information, please call: (512) 936-0903



Subchapter B. Contracting for Architectural and Engineering Services

43 TAC §§53.20-53.30

The new sections are adopted under Transportation Code, §361.042, which requires the Board to adopt rules for the regulation of its affairs and the conduct of its business, as well as under Transportation Code, §361.231, concerning contract awards and obligations assumed; §361.049, regarding procurement of professional consulting services; and §361.050, relating to maximization of opportunities for DBEs and HUBs.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Turnpike Authority Division of the Texas Department of Transportation

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For further information, please call: (512) 936-0903



Subchapter C. Contract Disputes and Debarment

43 TAC §§53.50-53.54

The new sections are adopted under Transportation Code, §361.042, which requires the Board to adopt rules for the regulation of its affairs and the conduct of its business, as well as under Transportation Code, §361.231, concerning contract awards and obligations assumed; §361.049, regarding procurement of professional consulting services; and §361.050, relating to maximization of opportunities for DBEs and HUBs.

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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James W. Griffin, P.E.

Interim Director

Texas Turnpike Authority Division of the Texas Department of Transportation

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For further information, please call: (512) 936-0903



Subchapter D. DBE/HUB Program

43 TAC §§53.60-53.71

The new sections are adopted under Transportation Code, §361.042, which requires the Board to adopt rules for the regulation of its affairs and the conduct of its business, as well as under Transportation Code, §361.231, concerning contract awards and obligations assumed; §361.049, regarding procurement of professional consulting services; and §361.050, relating to maximization of opportunities for DBEs and HUBs.

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-9815934

James W. Griffin, P.E.

Interim Director

Texas Turnpike Authority Division of the Texas Department of Transportation

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For further information, please call: (512) 936-0903



Chapter 54. Private Involvement in TTA Projects

Subchapter A. Policy, Rules and Procedures for Private Involvement in Authority Projects

43 TAC §§54.1-54.6

The Board of Directors (the "Board") of the Texas Turnpike Authority Division (the "Authority") of the Texas Department of Transportation adopts new §§54.1-54.6, relating to policies, rules and procedures for private involvement in Authority projects. Sections 54.1, 54.3, 54.5, and 54.6 are adopted with changes to the proposed text as published in the August 14, 1998, issue of the *Texas Register* (23 TexReg 8408). Section 54.2 and §54.4 are adopted without changes and will not be republished.

Transportation Code, §361.042, requires the Authority to adopt rules for the regulation of its affairs and the conduct of its business and, further, to do all things necessary or appropriate to carry out the powers granted to the Authority in Transportation Code, Chapter 361 (the "Turnpike Act"). Subchapter I of Chapter 361 of the Transportation Code provides for public and private participation in turnpike projects, and §361.306 requires the Authority to adopt rules, procedures and guidelines to promote fairness, obtain private participants in turnpike projects, and promote confidence among those participants. In compliance with these statutory requirements the Board proposes new sections concerning private participation in Authority projects.

Subchapter A is comprised of §§54.1-54.6. These rules are intended to promote fairness, obtain private participants in turnpike projects, and promote confidence among participants (in compliance with Transportation Code, §361.306). The

Authority believes it is in the best interests of the state to encourage and consider private involvement in its projects, and these rules are intended to provide a fair and efficient means for doing so.

Section 54.1 sets forth the Authority's policy of considering the feasibility of private involvement in turnpike projects, as well as the objectives of that policy. The rule notes that the Authority may issue RFPs and will also accept unsolicited proposals from private entities which it will evaluate in accordance with its rules and the Turnpike Act. The Authority is authorized to formulate selection criteria for its use in considering private entities with which the Authority may want to contract for involvement in a turnpike project consistent with Transportation Code, §361.306. This Section notes that these rules apply to private involvement in the acquisition, development, construction, improvement, extension, expansion or operation of all or substantially all of a turnpike project or projects, in distinction to the Authority's procurement of goods and services in the ordinary course of its operations. Section 54.1 has been revised to assure that the type of work to which these rules apply is consistent with Transportation Code, §361.001(4).

Section 54.2 defines words and terms to be used in new Chapter 54.

Section 54.3 sets forth general rules concerning the evaluation of proposals received from entities in response to RFPs issued by the Authority, as well as unsolicited proposals received by the Authority. The Authority reserves the right to reject proposals, terminate evaluation of proposals at any time, suspend, discontinue or terminate exclusive development agreement negotiations at any time, negotiate with proposers without being bound by any provision in a proposal, request or obtain additional information about any proposal, modify, amend, or cancel any RFP, revise, supplement or withdraw all or portions of these rules, or retain or return any proposal review fee paid pursuant to the rules. The rule also notes that proposals, whether solicited or unsolicited, become property of the Authority and are subject to the Public Information Act. Proposers are required to conspicuously designate information which they believe constitutes a trade secret, proprietary information or other information that is excepted from disclosure under the Public Information Act. The rule specifies that proposal review fees must be submitted with proposals, whether solicited or unsolicited, the amount of which is specified in the rules or shall be specified in the RFP. The rule requires proposals to be thorough and detailed so as to enable the Authority to evaluate the potential feasibility of the proposed project as well as the proposer's capabilities to complete the project. The rule notes that any public hearings required to be held pursuant to applicable law or regulation will be directed and overseen by the Authority. Section 54.3(e) has been revised to clarify that a thorough and detailed proposal should be submitted so as to allow for evaluation of the feasibility of the proposed project in addition to evaluation of the proposer's capabilities.

Section 54.4 addresses the submittal of solicited proposals. The rule calls for the Authority to issue an RFP to be published in conformance with its general procurement rules. The Authority may specify a two-phase approach for submittals, or a single phase submittal. Proposals are to be evaluated by the Authority based on a variety of factors, and proposers are to be evaluated to determine their financial condition, management stability, technological capability, experience, staffing, organizational structure, project commitment and other qualities the Authority

deems relevant. The Authority will rank proposals which are responsive to the RFP, and the top-ranked proposer is to submit a financial feasibility certificate before negotiating an exclusive development agreement with the Authority pursuant to the authority granted in Transportation Code, §361.302. The rules delineate the Authority's options in the event that a financial feasibility certificate is not submitted or in the event that the Authority and proposer are unsuccessful in negotiating an exclusive development agreement.

Section 54.5 addresses unsolicited proposals, and provides that unsolicited proposals may be submitted in a "detailed" or "conceptual" form. Detailed proposals must contain the information specified in the rule and be accompanied by the required proposal review fee. Detailed proposals will be reviewed by Authority staff under the guidance of the Authority's chief administrative officer (the "Director") and a recommendation will be made to the Board as to whether the project should be further evaluated. If the Board determines that further evaluation is warranted, the Authority shall provide an opportunity for the submission of competing proposals through public posting of notices and publication in the *Texas Register* and through publication in one or more newspapers of general circulation. The notice will summarize the proposed project, identify its location and interconnections with other transportation facilities, and provide a conceptual design. Prospective bidders are given 45 days in which to submit a competing proposal, and the Authority will then review and rank proposals (along with the original unsolicited proposal) using the evaluation criteria set forth in the rule. At that point the selection process shall proceed in the manner described in §54.4. Conceptual proposals must include a general description of the proposed turnpike project, anticipated costs, expected level of Authority participation and the identification of a contact person for the proposer. Such proposals must be accompanied by a proposal review fee in the amount specified in the rule, and will be reviewed by Authority staff under the guidance of the Director. A recommendation will be made to the Board or a committee thereof as to whether the Authority should request a follow-up proposal containing the information required in a detailed proposal. If a follow-up proposal is requested by the Board, the proposer shall have 45 days to submit such proposal (and the specified proposal review fee), and, once received, the follow-up proposal shall be processed as a "detailed proposal" under the provisions of this Chapter 54. Section 54.5(1)(A)(vii) and (viii) has been revised to clarify certain aspects of the information required to be submitted with a detailed proposal. Section 54.5(1)(C) has been revised to clarify that notice for submission of competing proposals will be published in the *Texas Register* and newspaper(s) of general circulation, but will not be "posted" as the Authority does not maintain a public area for posting of public notices. Section 54.5(1)(F) has been revised to be broken down into clauses (i) and (ii) in order to make the rule easier to read.

Section 54.6 describes the requirements and substance of a financial feasibility certificate. The rule contemplates that the Authority will maintain a list of prequalified financial consultants that will be available to review proposals submitted to the Authority and that must have no relationship to the proposer. Costs for financial review and obtaining financial feasibility certificates shall be charged directly to the proposer by the financial consultant. Inclusion on the Authority's list of prequalified financial consultants shall not disqualify such consultants from their ability to pursue other business opportunities and relationships with the Authority. Section 54.6 has been revised to clarify that:

(i) the Authority shall maintain a list of prequalified companies which may render financial feasibility certificates; (ii) the parties providing such certificates must be totally independent of the proposer for whom they are issuing the certificate; and (iii) the Authority shall determine who is qualified to issue certificates based upon information submitted by parties seeking prequalification.

No oral or written comments were received on the proposed new sections.

The new sections are adopted under Transportation Code, §361.042, which requires the Board to adopt rules for the regulation of its affairs and the conduct of its business, as well as Transportation Code, §§361.301-361.306, addressing public and private participation in turnpike projects.

§54.1. Statement of Policy.

(a) It is the policy of the Texas Turnpike Authority (Authority) to consider the feasibility of private involvement in every turnpike project which it undertakes. The objectives of this policy are to:

- (1) expand the scope of turnpike projects studied;
- (2) accelerate the construction and completion of turnpike projects;
- (3) reduce the overall costs of a turnpike project; and
- (4) maximize the benefits to be derived from turnpike project facilities.

(b) To encourage private participation, the Authority may, pursuant to the provisions of the Turnpike Act, issue request for proposals (RFPs) inviting proposals from private entities to acquire, design, finance, construct, maintain, operate, extend or expand turnpike projects pursuant to the provisions of the Turnpike Act. The Authority will also accept unsolicited proposals from private entities at any time, and will evaluate those proposals in accordance with these rules and the Turnpike Act. The Authority staff will consider the extent to which private involvement in existing and future projects of the Authority is practicable and beneficial, and will analyze whether Authority participation is practicable and beneficial with respect to projects proposed by responsible private parties. The Authority may formulate selection criteria for its use in considering the private entities with which the Authority may contract to undertake responsibilities for its projects, as well as for evaluation of projects suggested to the Authority as suitable for private participation.

(c) These rules apply to private involvement in the acquisition, development, construction, improvement, extension, expansion or operation of all or substantially all of a turnpike project or of multiple turnpike projects. These rules are not intended to limit or otherwise apply to the Authority's procurement of goods and services in the ordinary course of its operations, for which the Authority may seek private participation in accordance with the Turnpike Act and its other rules and policies.

§54.3. General Rules for Private Involvement.

(a) The rules in this subchapter address the manner by which the Texas Turnpike Authority (Authority) intends to evaluate proposals received from private entities in response to request for proposals (RFPs) issued by the Authority, as well as unsolicited proposals received by the Authority. The Authority reserves all rights available to it by law in administering these rules, including without limitation, the right in its sole discretion to:

- (1) reject any and all proposals, whether solicited or unsolicited, at any time;

(2) terminate evaluation of any and all proposals, whether solicited or unsolicited, at any time;

(3) suspend, discontinue or terminate exclusive development agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties;

(4) negotiate with a proposer without being bound by any provision in its proposal, whether solicited or unsolicited;

(5) request or obtain additional information about any proposal(s), whether solicited or unsolicited;

(6) modify, issue addenda to, or cancel any RFP;

(7) revise, supplement or make substitutions for all or any part of these rules; or

(8) retain or return all or any portion of the fees required to be paid by proposers hereunder.

(b) Under no circumstances shall the state, the department, the Authority, or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing solicited or unsolicited proposals or in negotiating agreements. Any and all information the Authority makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding these rules or any RFP issued by the Authority, the proposer must submit the question in writing to the person responsible for receiving all proposals and the Authority will provide the answers in writing. In submitting any proposal, whether solicited or unsolicited, the proposer shall be deemed to have unconditionally and irrevocably consented and agreed to the foregoing provisions and all other provisions of these rules.

(c) All proposals, whether solicited or unsolicited, submitted to the Authority become the property of the Authority and are subject to the Public Information Act, Texas Government Code, Chapter 552. Proposers should familiarize themselves with the provisions of that act. In no event shall the state, the department, the Authority, or any of their agents, representatives, consultants, directors, officers, or employees be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these rules. If the Authority receives a request for public disclosure of all or any portion of a proposal, the Authority will use reasonable efforts to notify the applicable proposer of the request and give such proposer an opportunity to assert, in writing, a claimed exception under the Public Information Act or other applicable law within the time period specified in the Authority's notice and allowed under the Act. Provided that the Authority receives the proposer's written assertions for the exception of identified materials within the time period specified in the Authority's notice, the Authority will forward those assertions to the Office of the Attorney General with the Authority's request for a determination of the matter. If a proposer has special concerns about information which it desires to make available to the Authority but which it believes constitutes a trade secret, proprietary information or other information excepted from disclosure, such proposer should specifically and conspicuously designate that information as such in its proposal.

(d) A nonrefundable and nonnegotiable proposal review fee may be required for any proposal submitted pursuant to these rules, whether solicited or unsolicited. Any such proposal review fee shall be applied by the Authority to offset the cost of processing and reviewing the applicable proposals. With respect to a proposal

submitted in response to an RFP issued by the Authority, the proposal review fee, if any, shall be the amount specified in the RFP. Any unsolicited proposal must be accompanied by a proposal review fee of \$20,000, except as provided in §54.5(2) of this title (relating to Unsolicited Proposals). The proposal review fee for any proposal submitted during the 30-day period described in §54.5(1)(D) of this title shall be \$20,000, unless otherwise expressly provided in the Authority's notice described in that section. Failure to submit the required proposal review fee, if any, shall bar the Authority's consideration of the applicable proposal. All fees payable by proposers pursuant to these rules shall be submitted in the form of a cashier's check made payable to the Authority.

(e) All proposals, whether solicited or unsolicited, should be as thorough and detailed as possible so that the Authority may properly evaluate the potential feasibility of the proposed project as well as the proposer's capabilities to complete the proposed project.

(f) Studies which the Authority deems necessary as to route designation, civil engineering, traffic and revenue, environmental compliance, and any other matters will be assigned, conducted and paid for as negotiated between the Authority and the successful proposer and set forth in the exclusive development agreement. Unless otherwise provided in the RFP issued with respect to a solicited proposal, the Authority will favor proposals, whether solicited or unsolicited, in which the costs for studies will be advanced by the proposer. Nonetheless, the Authority reserves the right to discharge, in whole or in part, the costs for such studies in its sole discretion and pursuant to the Turnpike Act. The Authority may require that the financial plan for each proposal, whether solicited or unsolicited, provide for reimbursement of all related expenses incurred by the Authority, as well as any Authority study funds utilized, in connection with the project.

(g) All approvals and all monetary or in-kind participation to be obtained from the department and/or the commission will be sought exclusively by the Authority, and not by the applicable proposer. Monetary participation may include loans or, to the extent permitted by the Texas Constitution, grants, and in-kind participation may include the contribution of right-of-way, improvements, materials or other assets. The Authority, in its sole discretion, may authorize the successful proposer to seek licensing, permitting, approvals, and participation required from other governmental entities and private parties, subject to such oversight and review by the Authority as specified in the exclusive development agreement.

(h) All public hearings required to be held pursuant to applicable law or regulation will be directed and overseen by the Authority, with participation by such other parties as it deems appropriate.

(i) Any matter not specifically addressed herein which pertains to the acquisition, design, financing, construction, maintenance, operation, extension or expansion of a turnpike project pursuant to the Turnpike Act or these rules shall be deemed to be within the primary purview of the Board, and all decisions pertaining thereto, whether or not addressed herein, shall be as determined by said Board, subject to the provisions of the Turnpike Act.

§54.5. *Unsolicited Proposals.*

Private entities may submit unsolicited proposals to the Authority requesting participation in a turnpike project to be constructed pursuant to the Turnpike Act. Such unsolicited proposals shall be designated by the proposer as a "Detailed Proposal" or a "Conceptual Proposal," and shall be processed according to the following rules shown in paragraphs (1)-(2) of this section.

(1) Detailed Proposals.

(A) A detailed proposal requesting Authority participation in a proposed turnpike project shall be filed with the Authority and must include the following information listed in clauses (i)-(xii) of this subparagraph:

(i) the name, address, and professional designation of each member of the proposer's management team and of other key employees or consultants;

(ii) the description, scope and location of the project;

(iii) the results expected from project implementation and the critical factors for the project's success;

(iv) all studies previously completed concerning the project;

(v) a general conceptual plan which includes, at a minimum, all proposed interconnections with other transportation facilities and information responsive to the evaluation criteria listed in §54.4(4) of this title (relating to Solicited Proposals);

(vi) complete information concerning the experience, expertise and qualifications of the proposer and of each member of the proposer's management team and of other key employees or consultants, including information responsive to the evaluation criteria listed in §54.4(5) of this title;

(vii) a description of all federal, state and local permits and approvals, together with documentation of support by appropriate public entities required for the project, and a schedule and methodology for obtaining said permits, approvals and support;

(viii) a detailed financial plan;

(ix) a specific description of the level and nature of participation sought from the Authority;

(x) a listing of anticipated opponents and a description of potential social, economic and environmental impacts, and potentially competing facilities and proposers;

(xi) other information of probable interest to Authority; and

(xii) the proposal review fee of \$20,000 in the form prescribed by §54.3 of this title (relating to General Rules for Private Involvement);

(B) Any detailed proposal properly filed with the Authority in accordance with subparagraph (A) of this paragraph and accompanied by the proper proposal review fee will be reviewed by the Authority staff under the supervision of the Director. Based on that review, an initial recommendation will be made to the Board (or designated committee thereof) as to whether the Authority should further evaluate its requested participation in the applicable turnpike project. That recommendation shall be based on whether the proposed project:

(i) is compatible with existing and planned transportation facilities; and

(ii) furthers state, regional and local transportation plans, programs, policies and goals, as well as the proposal's responsiveness to such other evaluation criteria as the Authority deems relevant.

(C) If the initial recommendation is that the Authority further evaluate its requested participation in the applicable turnpike

project and the Board (or designated committee thereof) approves that recommendation, the Authority staff shall publish notice of that decision and provide an opportunity for the submission of competing proposals as provided in this subsection. The Authority will publish a notice in the *Texas Register* and in one or more newspapers of general circulation. The notice will state that the Authority has received an unsolicited proposal under these rules and the Turnpike Act, that it intends to evaluate the proposal, that it may negotiate an exclusive development agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing proposals that the Authority receives in accordance with these rules within 45 days of the initial publication of the notice in the *Texas Register*. The notice will summarize the proposed turnpike project, identify its proposed location and interconnections with other transportation facilities, and provide a conceptual design. The Authority also may provide traffic counts, forecasts and other available data either in the notice or upon request of any party responding thereto.

(D) Failure by a prospective proposer to submit a competing proposal, together with the proper proposal review fee, within the 45-day period shall preclude such proposal from consideration by the Authority unless and until the Authority terminates consideration of, or negotiations on, the original unsolicited proposal and any and all competing proposals received within such 45-day period. The Authority will not grant requests to extend the 45-day period; and the receipt of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the commencement of any new 45-day period.

(E) The Authority recognizes that it may receive proposals which have certain characteristics in common with the original unsolicited proposal, yet differ in other material respects. In such cases, the Authority reserves the right, in its sole discretion, to treat any such proposal as either a competing proposal or a noncompeting proposal. Because of the consequences to a proposer of failing to submit within the 45-day period a proposal which the Authority could later deem a competing proposal, prospective proposers are strongly urged to monitor the Authority's notices of unsolicited proposals received, and to be prepared to submit within such 45-day period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, an unsolicited proposal which is the subject of a notice.

(F) Upon the expiration of the 45-day period, the Authority will subject the original unsolicited proposal, together with any and all properly submitted competing proposals, to the following single-phase evaluation and selection process. If one or more properly submitted competing proposals are received, the Authority shall review and rank said proposal(s), together with the original unsolicited proposal, utilizing the evaluation criteria set forth in §54.4(4) and (5) of this title and the information specified in subparagraph (A) of this paragraph. The proposers will be notified of the Authority's rankings, and the process will proceed in the manner described in §54.4(7) and (8) of this title including, without limitation, the delivery of the financial feasibility certificate and the participation of the Attorney General or the Attorney General's designated representative in the negotiation of an exclusive development agreement.

(i) If no properly submitted competing proposal is received, the party submitting the original unsolicited proposal shall be required to submit to the Authority the financial feasibility certificate within 30 days of its receipt of such notice from the Authority. If that party fails to submit the financial feasibility

certificate within said 30-day period, the Authority shall formally end the evaluation of the original unsolicited proposal and all negotiations with the proposer submitting same. Alternatively, if that proposer delivers the financial feasibility certificate, the Authority will attempt to negotiate an exclusive development agreement for the project described in the original unsolicited proposal.

(ii) The Attorney General or the Attorney General's designated representative will be included in the negotiation with the proposer. If an exclusive development agreement satisfactory to the Authority cannot be negotiated with that proposer, the Authority shall formally end the evaluation of the original unsolicited proposal and all negotiations with the proposer submitting same.

(2) Conceptual Proposals. A conceptual proposal requesting Authority participation in a proposed turnpike project must be filed with the Authority and be accompanied by a \$5,000 proposal review fee. At a minimum, a conceptual proposal must include a general description of the turnpike project, anticipated costs associated with the project, the expected level of Authority participation, and a designated contact for the proposer. Conceptual proposals shall be reviewed by the Authority staff under the supervision of the Director. Based on that review, an initial recommendation will be made to the Board (or a designated committee thereof) as to whether the Authority should request that the proposer submit a follow-up proposal containing the information described in paragraph (1)(A)(i)-(xii) of this section. If the recommendation is that the Authority request that the proposer submit a follow-up proposal and the Board (or designated committee thereof) approves that recommendation, the Authority staff shall notify the proposer in writing of the request. The proposer shall have 45 days from the date of receipt of the request in which to submit the follow-up proposal, which must be accompanied by a proposal review fee in the amount of \$15,000. Once received, the follow-up proposal shall be considered as a detailed proposal and shall be processed in accordance with the procedures set forth in paragraph (1)(B)-(F) of this section.

§54.6. *Financial Feasibility Certificate.*

As provided in §54.4(7) of this title (relating to Solicited Proposals) with respect to solicited proposals and in §54.5(1)(F) of this title (relating to Unsolicited Proposals) with respect to unsolicited proposals, a financial feasibility certificate shall be required as a condition to negotiating an exclusive development agreement with the successful proposer. In this regard, the Authority shall develop, maintain, and make available to potential proposers a list of prequalified companies and other parties that will be able to analyze, and offer an opinion as to the adequacy of, the financial plan set forth in a proposal submitted in response to these rules. All costs for the financial review and obtaining the financial feasibility certificate will be charged directly to the proposer by the financial consultant, and are not discharged by or included in the applicable proposal review fee. The parties providing the financial feasibility certificate shall be totally independent from the proposer that prepared the proposal and the financial plan under evaluation. The financial consultant providing the financial feasibility certificate as described above will be required to certify that it has no current or contemplated involvement with any individual or other party identified in the proposal that would constitute a conflict of interest, which shall include, but not be limited to, participating in a consortium, service as a consultant to a consortium, serving as a funding source or underwriter, being a subsidiary, parent or affiliate of any party involved in the proposal or otherwise being admitted to any share or part of the proposal or to any benefit arising therefrom. Except for the foregoing proscription against conflicts of interest, a party's inclusion on the Authority's list of prequalified financial consultants or activities in that capacity pursuant to this section shall in no

way disqualify that party from, or impair or limit its ability to pursue and engage in, other business opportunities and relationships with the Authority pertaining to these rules or otherwise. To be qualified as a party to analyze financial plans submitted in accordance with these rules and to issue, as appropriate, financial feasibility certificates, an interested party must submit a confidential questionnaire in the form prescribed by the Authority, which shall include certain information concerning that party's experience and qualifications. The Authority may request supplemental information for purposes of fully evaluating a party's qualifications to submit financial feasibility certificates. The Authority shall, in its sole discretion, evaluate the confidential questionnaires and any supplemental information requested by the Authority, and based thereon shall determine whether a party is qualified to issue financial feasibility certificates for the purposes set forth in this subchapter. The financial feasibility certificate to be provided by the prequalified financial consultants is as follows:

Figure: 43 TAC §54.6

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 12, 1998.

TRD-9815935

James W. Griffin, P.E.

Interim Director

Texas Turnpike Authority Division of the Texas Department of Transportation

Effective date: November 1, 1998

Proposal publication date: August 14, 1998

For further information, please call: (512) 936-0903



== REVIEW OF AGENCY RULES ==

This Section contains notices of state agency rules review as directed by the 75th Legislature, Regular Session, House Bill 1 (General Appropriations Act) Art. IX, Section 167. Included here are: (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the ***Texas Administrative Code*** on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the ***Texas Register*** office.

Proposed Rule Reviews

Texas Ethics Commission

Title 1, Part II

In accordance with the General Appropriations Act, Article IX, Section 167, 75th Legislature, 1997, the Texas Ethics Commission proposes to review Title 1, Texas Administrative Code, chapter 50 (Legislative Salaries and Per Diem). The reason for adopting the rules continues to exist. In conjunction with this review, the Texas Ethics Commission proposes to amend Section 50.1. The proposed amendment may be found in the Proposed Rules section of the October 30, 1998 issue of the *Texas Register*.

Comments on the proposed review from any member of the public are solicited. A written comment should be mailed or delivered to Karen Lundquist, Texas Ethics Commission, P.O. Box 12070, Austin, Texas, 78711-2070, or by facsimile (FAX) to (512)463-5777. A person who wants to offer spoken comments to the commission concerning the proposed review may do so at any commission meeting during the agenda item "Communication to the Commission from the Public." Information concerning the date, time, and location of commission meetings is available by telephoning (512) 463-5800 or, toll free in Texas, (800) 325-8506.

TRD-9815958

Tom Harrison

Executive Director

Texas Ethics Commission

Filed: October 12, 1998



Texas Commission on Jail Standards

Title 37, Part IX

The Texas Commission on Jail Standards proposes to review the following sections from Chapter 259 pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167:

259.1, 259.2, 259.3, 259.100, 259.101, 259.102, 259.103, 259.104, 259.105, 259.106, 259.107, 259.108, 259.109, 259.110, 259.111, 259.112, 259.113, 259.114, 259.115, 259.116, 259.117, 259.118, 259.119, 259.120, 259.121, 259.122, 259.123, 259.124, 259.125, 259.126, 259.127, 259.128, 259.129, 259.130, 259.131, 259.132,

259.133, 259.134, 259.135, 259.136, 259.137, 259.138, 259.139, 259.140, 259.141, 259.142, 259.143, 259.144, 259.145, 259.146, 259.147, 259.148, 259.149, 259.150, 259.151, 259.152, 259.153, 259.154, 259.155, 259.156, 259.157, 259.158, 259.159, 259.160, 259.161, 259.162, 259.163, 259.164, 259.165, 259.166, 259.167, 259.168, 259.169, 259.200, 259.201, 259.202, 259.203, 259.204, 259.205, 259.206, 259.207, 259.208, 259.209, 259.210, 259.211, 259.212, 259.213, 259.214, 259.215, 259.216, 259.217, 259.218, 259.219, 259.220, 259.221, 259.222, 259.223, 259.224, 259.225, 259.226, 259.227, 259.228, 259.229, 259.230, 259.231, 259.232, 259.233, 259.234, 259.235, 259.236, 259.237, 259.238, 259.239, 259.240, 259.241, 259.242, 259.243, 259.244, 259.245, 259.246, 259.247, 259.248, 259.249, 259.250, 259.251, 259.252, 259.253, 259.254, 259.255, 259.256, 259.257, 259.258, 259.259, 259.260, 259.261, 259.262, 259.263, 259.264, 259.265, 259.300, 259.301, 259.302, 259.303, 259.304, 259.305, 259.306, 259.307, 259.308, 259.309, 259.310, 259.311, 259.312, 259.313, 259.314, 259.315, 259.316, 259.317, 259.318, 259.319, 259.320, 259.321, 259.322, 259.323, 259.324, 259.325, 259.326, 259.327, 259.328, 259.329, 259.330, 259.331, 259.332, 259.333, 259.334, 259.335, 259.336, 259.337, 259.338, 259.339, 259.340, 259.341, 259.342, 259.343, 259.344, 259.345, 259.346, 259.347, 259.348, 259.349, 259.350, 259.351, 259.352, 259.353, 259.354, 259.355, 259.356, 259.357, 259.358, 259.359, 259.360, 259.361, 259.362, 259.363, 259.364, 259.400, 259.401, 259.402, 259.403, 259.404, 259.405, 259.406, 259.407, 259.408, 259.409, 259.410, 259.411, 259.412, 259.413, 259.414, 259.415, 259.416, 259.417, 259.418, 259.419, 259.420, 259.421, 259.422, 259.423, 259.424, 259.425, 259.426, 259.427, 259.428, 259.429, 259.430, 259.431, 259.432, 259.433, 259.434, 259.435, 259.436, 259.437, 259.438, 259.439, 259.440, 259.441, 259.442, 259.443, 259.444, 259.445, 259.446, 259.447, 259.448, 259.449, 259.450, 259.451, 259.452, 259.453, 259.454, 259.455, 259.456, 259.457, 259.458, 259.459, 259.460, 259.500, 259.501, 259.502, 259.503, 259.504, 259.505, 259.506, 259.507, 259.508, 259.509, 259.510, 259.511, 259.512, 259.513, 259.514, 259.515, 259.516, 259.517, 259.518, 259.519, 259.520, 259.521, 259.522, 259.600, 259.601, 259.602, 259.603, 259.604, 259.605, 259.606, 259.607, 259.608, 259.609, 259.610, 259.611, 259.612, 259.613, 259.614, 259.615, 259.616, 259.617, 259.618, 259.619, 259.620, 259.621, 259.622, 259.700, 259.701, 259.702, 259.703, 259.704, 259.705, 259.706, 259.707, 259.708, 259.709, 259.710, 259.711, 259.712, 259.713, 259.714, 259.715, 259.716, 259.717, 259.718,

259.719, 259.720, 259.721, 259.722, 259.723, 259.724, 259.725, 259.726, 259.727, 259.728, 259.729, 259.730, 259.731, 259.732, 259.733, 259.734, 259.735, 259.736, 259.737, 259.738, 259.739, 259.740, 259.741, 259.742, 259.743, 259.744, 259.745, 259.746, 259.747, 259.748, 259.749, 259.750, 259.751, 259.752, 259.753, 259.754, 259.755, 259.756, 259.757, 259.758, 259.759, 259.760, 259.761, 259.762, 259.763, 259.764, 259.765, 259.766, 259.767, 259.768, 259.769, 259.770, 259.771, 259.772 and 259.773.

The Texas Commission on Jail Standards is contemporaneously proposing amendments to: §§259.107, 259.109, 259.112, 259.114, 259.121-259.124, 259.130, 259.132, 259.133, 259.136-259.143, 259.159, 259.162, 259.165, 259.166 (concerning New Maximum Security Design, Construction and Furnishing Requirements), §§259.208, 259.210, 259.213, 259.215, 259.222-259.225, 259.230, 259.232-259.240, 259.242, 259.255, 259.258, 259.261, 259.262 (concerning New Lockup Design, Construction and Furnishing Requirements), §§259.301, 259.306, 259.310, 259.312, 259.317-259.320, 259.325, 259.327 (concerning New Medium Security Design, Construction and Furnishing Requirements), §§259.401, 259.406, 259.412, 259.417-259.420, 259.425, 259.427 (concerning New Minimum Security Design, Construction and Furnishing Requirements), §259.602 (concerning Temporary Housing - Buildings), §§259.707, 259.709, 259.712, 259.714, 259.721, 259.722, 259.724, 259.725, 259.731 (concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements); the repeal of §§259.328-259.364 (concerning New Medium Security Design, Construction and Furnishing Requirements), §§259.732-259.773 (concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements) and new §259.170 (concerning New Maximum Security Design, Construction and Furnishing Requirements), §§259.328-259.359 (concerning New Medium Security Design, Construction and Furnishing Requirements) and §§259.732-259.771 (concerning New Long-Term Incarcerations Design, Construction and Furnishing Requirements), elsewhere in this issue of the *Texas Register*.

Comments on the review of these proposed rules may be submitted to Lynn Weatherby, Texas Commission on Jail Standards, P.O. Box 12985, Austin, Texas, 78711.

TRD-9815953

Jack E. Crump

Executive Director

Texas Commission of Jail Standards

Filed: October 12, 1998



Texas Department of Licensing and Regulation

Title 16, Part IV

The Texas Department of Licensing and Regulation (department) files this notice of intent to review and consider for reoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 68, Architectural Barriers. This review and consideration is being conducted in accordance with the General Appropriations Act, House Bill 1, Article IX, §167, 75th Legislature.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lam-

bert, General Counsel/Director of Enforcement, P.O. Box 12157, Austin, Texas, 78711, facsimile (512) 475-2872, or by e-mail theda.lambert@license.state.tx.us. The deadline for comments is two weeks after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

16 TAC §68.1. Authority

16 TAC §68.10. Definitions

16 TAC §68.20. Registration - Submittal of Construction Documents

16 TAC §68.21. Registration - Subject Buildings and Facilities

16 TAC §68.30. Exemptions

16 TAC §68.31. Variance Application

16 TAC §68.32. Appeals

16 TAC §68.33. Technical Deviation - State Leased Facilities

16 TAC §68.60. Responsibilities of Department - Review of Construction Documents

16 TAC §68.61. Responsibilities of the Department - Resubmittals

16 TAC §68.62. Responsibilities of the Department - Inspections

16 TAC §68.63. Responsibilities of the Department - Corrective Modifications

16 TAC §68.64. Responsibilities of the Department - Certificates and Approvals

16 TAC §68.65. Advisory Committee

16 TAC §68.66. Responsibilities of the Department - Contract Providers

16 TAC §68.70. Responsibilities of the Registrant - Construction Document Submittals

16 TAC §68.71. Responsibilities of the Registrant - Resubmittals

16 TAC §68.72. Responsibilities of the Registrant - Corrective Modifications

16 TAC §68.80. Fees

16 TAC §68.90. Sanctions - Administrative Sanctions or Penalties

16 TAC §68.92. Failure to Submit

16 TAC §68.93. Complaints and Investigations

16 TAC §68.100. Technical Standards

TRD-9815898

Rachelle A. Martin

Executive Director

Texas Department of Licensing and Regulation

Filed: October 9, 1998



An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

As required by §167, any questions or written comments pertaining to this rule review may be submitted to Theda Lambert, General Counsel/Director of Enforcement, P.O.Box 12157, Austin, Texas, 78711, facsimile (512) 475-2872, or by e-mail theda.lambert@license.state.tx.us. The deadline for comments is two weeks after publication in the *Texas Register*.

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code Annotated, Chapter 2001.

16 TAC §70.1. Authority

16 TAC §70.10. Definitions

16 TAC §70.20. Registration of Manufacturers and Industrialized Builders

16 TAC §70.21. Registration of Design Review Agencies and Third Party Inspection Agencies and Inspectors

16 TAC §70.22. Criteria for Approval of Design Review Agencies

16 TAC §70.23. Criteria for Approval of Third Party Inspection Agencies and Inspectors

16 TAC §70.30. Exemptions

16 TAC §70.40. Insurance/Bonding/Security Requirements

16 TAC §70.50. Manufacturer's and Builder's Monthly Reports

16 TAC §70.51. Third Party Inspection Reports

16 TAC §70.60. Responsibilities of the Department - Plant Certification

16 TAC §70.61. Responsibilities of the Department - In-plant Inspection

16 TAC §70.62. Responsibilities of the Local Building Official-Building Site Inspections

16 TAC §70.63. Council's Responsibilities - Compliance Disputes

16 TAC §70.64. Responsibilities of the Department - Proprietary Information Protected

16 TAC §70.65. Responsibilities of the Commissioner - Reciprocity

16 TAC §70.70. Responsibilities of the Registrants - Manufacturer's Design Package

16 TAC §70.71. Responsibilities of the Registrants - Manufacturer's Data Plate

16 TAC §70.72. Responsibilities of the Registrants - Delivery to other States

16 TAC §70.73. Responsibilities of the Registrants - Building Site Inspections

16 TAC §70.74. Responsibilities of the Registrants - Alterations or Deviations

16 TAC §70.75. Responsibilities of the Registrants - Permit/Owner Information

16 TAC §70.76. Responsibilities of the Registrants - Proprietary Information Protected

16 TAC §70.77. Responsibilities of the Registrants - Decals and Insignia

16 TAC §70.78. Responsibilities of the Registrants - General

16 TAC §70.80. Commission Fees

16 TAC §70.90. Sanctions - Administrative Sanctions/Penalties

16 TAC §70.91. Sanctions - Revocation, Suspension, or Denial Because of a Criminal Record

16 TAC §70.92. Sanctions for Failure to Comply by Design Review Agencies, Third Party Inspection Agencies, and Third Party Inspectors

16 TAC §70.100. Mandatory State Codes

16 TAC §70.101. Amendments to Mandatory State Codes

16 TAC §70.102. Use and Construction of Codes

16 TAC §70.103. Alternate Materials and Methods

16 TAC §70.120. Intent

TRD-9815897

Rachelle A. Martin

Executive Director

Texas Department of Licensing and Regulation

Filed: October 9, 1998



Texas Natural Resource Conservation Commission

Title 30, Part I

The Texas Natural Resource Conservation Commission (commission) proposes the review of 30 TAC Chapter 290, Subchapters D-G, concerning Public Drinking Water.

This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. That act requires state agencies to review, and consider for re-adoption, rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist.

The commission has reviewed the rules in Chapter 290, Subchapter D-F, concerning Public Water Systems, and determined that the reasons for adopting those rules continue to exist. Adopted pursuant to Texas Health and Safety Code, Chapter 341, Subchapter C, these rules are necessary to protect the public health and welfare by assuring the microbiological, chemical and radiological quality of public water supplies; assuring an adequate quantity of drinking water; assuring that new systems are financially stable and technically sound; establishing fees for these services; and assuring minimum acceptable operating practices for public water systems.

The commission has reviewed the rules in Chapter 290, Subchapter G, concerning Water Saving Performance Standards and determined that the reasons for adopting those rules continue to exist. The purposes of Chapter 290, Subchapter G, concerning Water Saving Performance Standards are to establish procedures for listing plumbing fixtures meeting water saving performance standards, to establish labeling requirements for plumbing fixtures, and to establish labeling requirements for clothes-washing and dishwashing machines and lawn sprinklers as required by Health and Safety Code §372.001 *et. seq.*

The commission concurrently proposes amendments to Chapter 290, Subchapters D-G in the Proposed Rules section of this issue of the *Texas Register*. These changes are proposed as a result of recent legislation or are proposed as a result of the commission's review of the rules, in which case, those changes primarily address the

commission's regulatory reform goals. The specific changes are noted in the proposed rule preamble.

Comments on the commission's review of the rules contained in Chapter 290, Subchapters D-G, may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Todd Chenoweth, Water Policy Division, at (512) 239-4483.

TRD-9815921

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: October 12, 1998



The Texas Natural Resource Conservation Commission (commission) proposes the review of 30 TAC Chapter 291, concerning Water Rates.

This review is in accordance with the General Appropriations Act, Article IX, §167, 75th Legislature, 1997. That act requires state agencies to review, and consider for re adoption, rules adopted under the Administrative Procedure Act. The reviews must include, at a minimum, an assessment that the reason for the rules continues to exist.

The commission has reviewed the rules in Chapter 291, concerning Water Rates, and determined that the reasons for adopting those rules continue to exist. Adopted pursuant to Texas Water Code, Chapter 13, these rules are necessary to protect the public health and welfare by establishing a comprehensive regulatory system for water and sewer utilities to assure rates, operations, and services that are just and reasonable to the consumers and to the utilities.

The commission concurrently proposes amendments to Chapter 291, in the Proposed Rules section of this issue of the *Texas Register*. These changes are proposed as a result of recent legislation or are proposed as a result of the commission's review of the rules, in which case, those changes primarily address the commission's regulatory reform goals. The specific changes are noted in the proposed rule preamble.

Comments on the commission's review of the rules contained in Chapter 291, may be mailed to Lutrecia Oshoko, Texas Natural Resource Conservation Commission, Office of Policy and Regulatory Development, MC-205, P.O. Box 13087, Austin, Texas, 78711-3087, (512) 239-4640, or faxed to (512) 239-5687. All comments should reference Rule Log Number 97148-291-WT. Written comments must be received by 5:00 p.m., November 23, 1998. For further information or questions concerning this proposal, please contact Todd Chenoweth, Water Policy Division, at (512) 239-4483.

TRD-9815920

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: October 12, 1998



Public Utility Commission

Title 16, Part II

The Public Utility Commission of Texas files this notice of intention to review Procedural Rules, Subchapter L (relating to Evidence and Exhibits in Contested Cases), §§22.221 relating to Rules of Evidence in Contested Cases; 22.222 relating to Official Notice; 22.223 relating to Witnesses to be Sworn; 22.224 relating to Documentary Evidence; 22.225 relating to Written Testimony and Accompanying Exhibits; 22.226 relating to Exhibits; 22.227 relating to Offers of Proof; and 22.228 relating to Stipulation of Facts pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167). Project Number 17709 has been assigned to this proceeding.

As part of this review process, the commission proposes amendments to §22.222 and §22.225. The proposed amendments may be found in the Proposed Rules section of the *Texas Register*. The commission will accept comments on the Section 167 requirement as to whether the reason for adopting these sections continues to exist in the comments filed on the proposed amendments.

The commission is not proposing any changes to §§22.221, 22.223, 22.224 and 22.226 - 22.228. Comments regarding the Section 167 requirement as to whether the reason for adopting these sections continues to exist may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326 within 30 days after publication of this notice of intention to review. All comments should refer to Project Number 17709 - Review of Subchapter L relating to Evidence and Exhibits in Contested Cases.

Any questions pertaining to this notice of intention to review should be directed to Rhonda Dempsey, Rules Coordinator, Office of Regulatory Affairs, Public Utility Commission of Texas, 1701 N. Congress Avenue, Austin, Texas 78711-3326 or at voice telephone (512) 936-7308.

16 TAC §22.221. Rules of Evidence in Contested Cases.

16 TAC §22.222. Official Notice.

16 TAC §22.223. Witnesses to Be Sworn.

16 TAC §22.224. Documentary Evidence.

16 TAC §22.225. Written Testimony and Accompanying Exhibits.

16 TAC §22.226. Exhibits.

16 TAC §22.227. Offers of Proof.

16 TAC §22.228. Stipulation of Facts.

TRD-9815882

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 9, 1998



Adopted Rule Reviews

State Office of Administrative Hearings

Title 1, Part VII

The State Office of Administrative Hearings (SOAH) has completed the review of Chapter 163, concerning arbitration procedures which may be elected for certain enforcement actions prosecuted by the Department of Human Services as noticed in the August 7, 1998 issue of the *Texas Register* (23 TexReg 8210). SOAH readopts Chapter 163, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) and finds that the reason for adopting this Chapter continues to exist.

SOAH received no comments on the Section 167 requirement as to whether the reasons for adopting the rules continue to exist. As part of this review process, SOAH proposed amendments to §§163.3, 163.11, 163.15, 163.19, 163.21, 163.23, 163.25, 163.43, 163.55, 163.61, and 163.67 as published in the *Texas Register* on August 7, 1998 (23 TexReg 8009). SOAH received no comments on the proposed amendments.

These rules are adopted under Government Code 2001, §2001.004 (Vernon 1998), which requires agencies to adopt rules of practice setting forth the nature and requirements of formal and informal procedures, and Government Code 2003, §2003.050 (Vernon 1998), which states that the chief administrative law judge shall adopt rules that govern the procedures, including the discovery procedures, that relate to a hearing conducted by the office.

Cross Reference to Statutes: Health and Safety Code, Chapter 242; the Government Code, Chapter 2003; and the Human Resources Code, Chapter 32, §32.021(k).

- 1 TAC §163.1. Definitions
- 1 TAC §163.3. Election of Arbitration
- 1 TAC §163.5. Initiation of Arbitration
- 1 TAC §163.7. Changes of Claim
- 1 TAC §163.9. Filing and Service of Documents
- 1 TAC §163.11. Selection of Arbitrator
- 1 TAC §163.13. Notice to and Acceptance by Arbitrator of Appointment
- 1 TAC §163.15. Disclosure Requirements and Challenge Procedure
- 1 TAC §163.17. Vacancies
- 1 TAC §163.19. Qualifications of Arbitrators
- 1 TAC §163.21. Costs of Arbitration
- 1 TAC §163.23. Stenographic Record
- 1 TAC §163.25. Electronic Record
- 1 TAC §163.27. Interpreters
- 1 TAC §163.29. Duties of the Arbitrator
- 1 TAC §163.31. Communication of Parties with Arbitrator
- 1 TAC §163.33. Date, Time, and Place of Hearing
- 1 TAC §163.35. Representation
- 1 TAC §163.37. Public Hearings and Confidential Material
- 1 TAC §163.39. Preliminary Conference
- 1 TAC §163.41. Exchange and Filing of Information
- 1 TAC §163.43. Discovery
- 1 TAC §163.45. Control of Proceedings
- 1 TAC §163.47. Evidence
- 1 TAC §163.49. Witnesses
- 1 TAC §163.51. Exclusion of Witnesses
- 1 TAC §163.53. Evidence by Affidavit
- 1 TAC §163.55. Order of Proceedings
- 1 TAC §163.57. Evidence Filed After the Hearing
- 1 TAC §163.59. Attendance Required

- 1 TAC §163.61. Order
 - 1 TAC §163.63. Effect of Order
 - 1 TAC §163.65. Clerical Error
 - 1 TAC §163.67. Appeal
- TRD-9815912
Amalija J. Hodgins
Deputy Chief Administrative Law Judge
State Office of Administrative Hearings
Filed: October 9, 1998



Public Utility Commission of Texas

Title 16, Part II

The Public Utility Commission of Texas (commission) has completed the review of Procedural Rules, Subchapter K (relating to Hearings), §§22.201 relating to Place and Nature of Hearings; 22.202 relating to Presiding Officer; 22.203 relating to Order of Procedure; 22.204 relating to Transcript and Record; 22.205 relating to Briefs; 22.206 relating to Consideration of Contested Settlements; and 22.207 relating to Referral to State Office of Administrative Hearings as noticed in the July 17, 1998 *Texas Register* (23 TexReg 7396). The commission readopts these sections, pursuant to the requirements of the Appropriations Act of 1997, HB 1, Article IX, Section 167 (Section 167) and finds that the reason for adopting these rules continues to exist. Project Number 17709 is assigned to this proceeding.

The commission received no comments on the Section 167 requirement as to whether the reason for adopting the rules continues to exist. As part of this review process, the commission proposed an amendment to §22.202 as published in the *Texas Register* on July 17, 1998 (23 TexReg 7323). No comments were received on the proposed amendment.

These sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 and §14.052 (Vernon 1998) which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules of practice and procedure.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and §14.052.

- 16 TAC §22.201. Place and Nature of Hearings
 - 16 TAC §22.202. Presiding Officer
 - 16 TAC §22.203. Order of Procedure
 - 16 TAC §22.204. Transcript and Record
 - 16 TAC §22.205. Briefs
 - 16 TAC §22.206. Consideration of Contested Settlements
 - 16 TAC §22.207. Referral to State Office of Administrative Hearings
- TRD-9815658
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 7, 1998



Texas Board of Professional Land Surveying

Title 22, Part XXIX

The Texas Board of Professional Land Surveying adopts the review of Chapter 664, Continuing Education, pursuant to the Appropriations Act of 1997, HB 1, Article IX, Section 167, published in the September 11, 1998, issue of the *Texas Register* (23 TexReg 9440). The Texas Board of Professional Land Surveying finds that the reason for adopting Chapter 664, Continuing Education, continues to exist.

The Texas Board of Professional Land Surveying concludes the review of Chapter 664, Continuing Education.

TRD-9815919

Sandy Smith

Executive Director

Texas Board of Professional Land Surveying

Filed: October 12, 1998



Railroad Commission of Texas

Title 16, Part I

The Railroad Commission of Texas adopts without changes the following rules in accordance with the requirements of Article IX, section 167 of the 1997-98 General Appropriations Act (HB 1, 75th Legislature, Regular Session) as published in the August 21, 1998, issue of the *Texas Register* (23 TexReg 8697):

Sections 15.1, 15.3, 15.5, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, and 15.100 relating to general rules of practice and procedure;

Section 15.30 relating to the Propane Alternative Fuels Advisory Committee;

Sections 15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.152, 15.155, 15.160, and 15.165 relating to the propane consumer rebate program;

Sections 15.201, 15.205, 15.210, 15.215, 15.220, 15.225, 15.230, 15.235, 15.240, and 15.245 relating to the media rebate program;

Sections 15.301, 15.305, 15.310, 15.315, 15.320, 15.325, 15.330, 15.335, 15.340, 15.345, and 15.350, relating to the highway signage rebate program; and

Sections 15.401, 15.405, 15.410, 15.415, 15.420, 15.425, 15.430, 15.435, 15.440, 15.445, 15.450, and 15.455, relating to the manufactured housing incentive program.

The Commission received no comments on the proposed rule review.

TRD-9816003

Mary Ross McDonald

Deputy General Counsel

Railroad Commission of Texas

Filed: October 13, 1998



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. Multiple graphics in a rule are designated as "Figure 1" followed by the TAC citation, "Figure 2" followed by the TAC citation.

Figure : 30 TAC §290.44 (c)

Maximum Number of Connections	Minimum Line Size (inches)
10	2
25	2.5
50	3
100	4
150	5
250	6
>250	8 and larger

Figure : 30 TAC §290.47(a)

APPENDIX A

Requirements. Public water supply systems which achieve and maintain recognition must exceed the minimum acceptable standards of the commission in these sections.

(1) To attain recognition as a "Superior Public Water System", the following additional requirements must be met:

(A) Physical facilities shall comply with the requirements in these sections.

(B) There shall be a minimum of two certified operators with additional operators required for larger systems.

(C) The system's microbiological record for the previous 24 months period shall indicate no violations (frequency, number or MCL) of the drinking water standards.

(D) The quality of the water shall comply with all primary water quality parameters listed in the drinking water standards.

(E) The chemical quality of the water shall comply with all secondary constituent levels listed in the drinking water standards.

(F) The system's operation shall comply with applicable state statutes and minimum acceptable operating practices set forth in §290.46 of this title (relating to Minimum Acceptable Operating Practices for Public Drinking Water Supplies).

(G) The system's capacities shall meet or exceed minimum water system capacity requirements set forth in §290.45 of this title (relating to Minimum Water System Capacity Requirements).

(H) The system shall have at least two wells, two raw water pumps or a combination of these with enough capacity to provide average daily consumption with the largest well or pump out of service. This requirement shall also apply to treatment plant pumps necessary for operation in accordance with §290.42 of this title (relating to Water Treatment).

(I) The water system shall be well maintained and the facilities shall present a pleasing appearance to the public.

(2) To attain recognition as an "Approved Public Water System," all additional requirements listed under subsection (a)(1) of this section with exception of secondary constituents, subsection (a)(1)(E) of this section must be met. Public water systems which provide water quality that exceeds the secondary chemical standards may be excluded from this recognition program at the discretion of the executive director ~~Executive Director~~.

Signs. Systems which have met the requirements for recognition as a superior or approved system may erect signs denoting this honor.

Inspections. To receive or maintain recognition as a superior or approved water system, the system must be inspected and evaluated by commission personnel as to physical facilities, appearance and operation. Systems which fail to meet the above requirements in this section will be denied recognition or will have their recognition revoked. The signs shall be immediately removed on notice from the executive director ~~Executive Director~~.

Figure : 30 TAC §290.47(b)

SERVICE AGREEMENT

I.PURPOSE. The NAME OF WATER SYSTEM is responsible for protecting the drinking water supply from contamination or pollution which could result from improper private water distribution system construction or configuration ~~plumbing practices~~. The purpose of this service agreement is to notify each customer of the plumbing restrictions which are in place to provide this protection. The utility enforces these restrictions to ensure the public health and welfare. Each customer must sign this agreement before the NAME OF WATER SYSTEM will begin service. In addition, when service to an existing connection has been suspended or terminated, the water system will not re-establish service unless it has a signed copy of this agreement.

II.PLUMBING RESTRICTIONS. The following unacceptable plumbing practices are prohibited by State regulations.

A.No direct connection between the public drinking water supply and a potential source of contamination is permitted. Potential sources of contamination shall be isolated from the public water system by an air-gap or an appropriate backflow prevention device.

B.No cross-connection between the public drinking water supply and a private water system is permitted. These potential threats to the public drinking water supply shall be eliminated at the service connection by the installation of an air-gap or a reduced pressure-zone backflow prevention device.

C.No connection which allows water to be returned to the public drinking water supply is permitted.

D.No pipe or pipe fitting which contains more than 8.0% lead may be used for the installation or repair of plumbing at any connection which provides water for human use.

E.No solder or flux which contains more than 0.2 percent lead can be used for the installation or repair of plumbing at any connection which provides water for human use.

III.SERVICE AGREEMENT. The following are the terms of the service agreement between the NAME OF WATER SYSTEM (the Water System) and NAME OF CUSTOMER (the Customer).

A.The Water System will maintain a copy of this agreement as long as the Customer and/or the premises is connected to the Water System.

B.The Customer shall allow his property to be inspected for possible cross-connections and other potential contamination hazards ~~unacceptable plumbing practices~~. These inspections shall be conducted by the Water System or its designated agent prior to initiating new water service; when there is reason to believe that cross-connections or other potential contamination hazards ~~unacceptable plumbing practices~~ exist; or after any major changes to the private water distribution plumbing facilities. The inspections shall be conducted during the Water System's normal business hours.

C.The Water System shall notify the Customer in writing of any cross-connection or other potential contamination hazard ~~unacceptable plumbing practice~~ which has been identified during the initial inspection or the periodic reinspection.

appropriate backflow prevention device at the service connection. Any expenses associated with the enforcement of this agreement shall be billed to the Customer.

CUSTOMER'S SIGNATURE: _____

DATE: _____

Figure: 30 TAC §290.47 (c)

SANITARY CONTROL EASEMENT

DATE: _____, 19 _____

GRANTOR(S) :

GRANTOR'S ADDRESS:

GRANTEE:

GRANTEE'S ADDRESS:

SANITARY CONTROL EASEMENT:

Purpose, Restrictions, and Uses of Easement:

1. The purpose of this easement is to protect the water supply of the well described and located below by means of sanitary control.
2. The construction and operation of underground petroleum and chemical storage tanks and liquid transmission pipelines, stock pens, feedlots, dump grounds, privies, cesspools, septic tank or sewage treatment drainfields, improperly constructed water wells of any depth, and all other construction or operation that could create an insanitary condition within, upon, or across the property subject to this easement are prohibited within this easement. For the purpose of the easement, improperly constructed water wells are those wells which do not meet the surface and subsurface construction standards for a public water supply well.
3. The construction of tile or concrete sanitary sewers, sewer appurtenances, septic tanks, storm sewers, and cemeteries is specifically prohibited within a 50-foot radius of the water well described and located below.
4. This easement permits the construction of homes or buildings upon the Grantor's property as long as all items in Restrictions Nos. 2 and 3 are recognized and followed.
5. This easement permits normal farming and ranching operations, except that livestock shall not be allowed within 50 feet of the water well.

The Grantor's property subject to this Easement is described in the documents recorded at:

Volume _____, Pages _____ of the Real Property Records of _____ County, Texas.

Property Subject to Easement: _____

INVALIDATION:

Invalidation of any one of these restrictions or uses (covenants) by a judgement or court order shall not affect any of the other provisions of this easement, which shall remain in full force and effect.

FOR AND IN CONSIDERATION, of the sum of One Dollar (\$1.00) and for other good and valuable consideration paid by the Grantee to the Grantor(s), the receipt of which is hereby acknowledged, the Grantor does hereby grant and convey to Grantee and to its successors and assigns the sanitary control easement described in this easement.

GRANTOR(S)

By: _____

ACKNOWLEDGMENT

STATE OF TEXAS<*>

<*>

COUNTY OF _____<*>

BEFORE ME, the undersigned authority, on the ____ day of _____, 19__, personally appeared _____ known to me to be the person(s) whose name(s) is(are) subscribed to the foregoing instrument and acknowledged to me that _____ executed the same for the purposes and consideration therein expressed.

Notary Public in and for
THE STATE OF TEXAS
My Commission Expires: _____

Typed or Printed Name of Notary

10/23/98

HUSBAND AND WIFE ACKNOWLEDGEMENT

STATE OF TEXAS <*>

<*>

COUNTY OF _____ <*>

BEFORE ME, the undersigned authority, on the ____ day of _____, 19 __, personally appeared _____
_____, husband and wife, known to me to be the persons whose names are
subscribed to the foregoing instrument and acknowledged to me that they executed the same for the
purposes and consideration therein expressed.

Notary Public in and for
The State of Texas
My Commission Expires: _____

Typed or Printed Name of Notary

Recorded in _____ Courthouse, _____, Texas on _____, 19__.

LIST MORE THAN ONE UTILITY OFFICIAL AND PHONE NUMBER. DO NOT LIST THE COMMISSION AS THE PRIMARY CONTACT.
If a customer wishes to call the commission, please have them call 512/239-6020.

Figure : 30 TAC 290.47(f)

The following form must be completed for each assembly tested. A signed and dated original must be submitted to the public water supplier for recordkeeping purposes:

BACKFLOW PREVENTION ASSEMBLY TEST AND MAINTENANCE REPORT

NAME OF PWS: _____
 PWS I.D. # _____
 LOCATION OF SERVICE: _____

The backflow prevention assembly detailed below has been tested and maintained as required by TNRCC regulations and is certified to be operating within acceptable parameters.

TYPE OF ASSEMBLY

- Reduced Pressure Principle Pressure Vacuum Breaker
- Double Check Valve Atmosphere Vacuum Breaker

Manufacturer _____ Size _____
 Model Number _____ Located At _____
 Serial Number _____

	Reduced Pressure Principle Assembly			Pressure Vacuum Breaker	
	Double Check Valve Assembly		Relief Valve	Air Inlet	Check Valve
	1st Check	2nd Check		Opened at _____psid	_____psid
Initial Test	DC-Closed Tight <input type="checkbox"/> RP- _____psid Leaked <input type="checkbox"/>	Closed Tight <input type="checkbox"/> Leaked <input type="checkbox"/>	Opened at _____psid	Did not Open <input type="checkbox"/>	Leaked <input type="checkbox"/>
Repairs and Materials Used					
Test After Repair	DC-Closed Tight <input type="checkbox"/> RP _____psid	Closed Tight <input type="checkbox"/>	Opened at _____psid	Opened at _____psid	_____psid

The above is certified to be true.

Firm Name _____ Certified Tester _____
 Firm Address _____ Cert. Tester No. _____ Date _____

Figure: 30 TAC 290.47(g)

Section 290.46(e), Operation by Certified Personnel, paragraph 4, requires certified operators to provide a written, dated, and signed notice listing the public water systems which they operate or are employed. This is required when applying for, renewing, or upgrading a certificate of competency. This notice must be amended in writing within 10 days of any change in responsibility.

SYSTEM NAME	I.D. #	COUNTY
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		

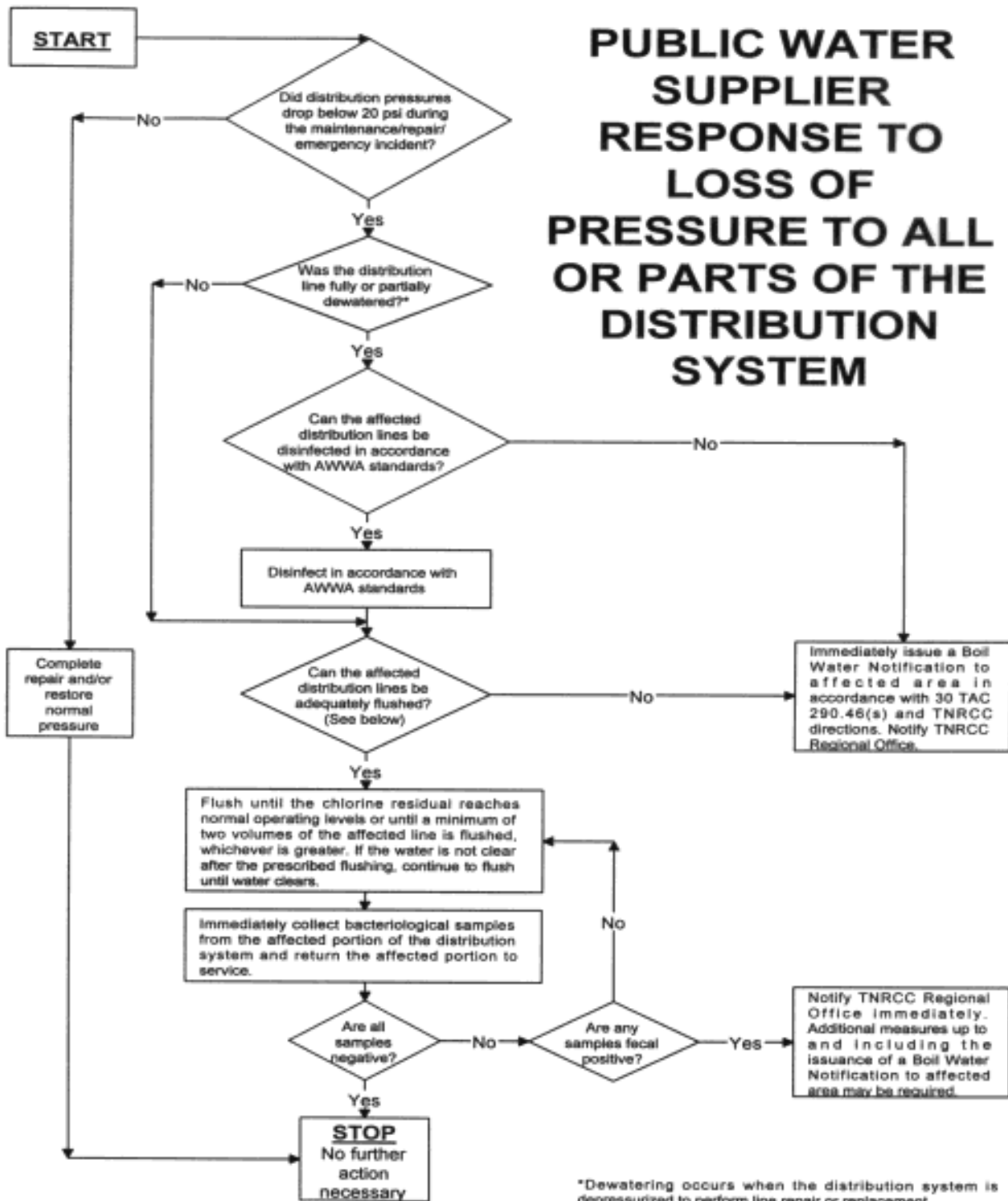
Signature of Operator Social Security Number

Grade of Certificate Expiration Date

This notice should be submitted to the Operator Occupational Certification Section, Compliance Support Environmental Training Division, Texas Natural Resource Conservation Commission, P.O. Box 13087, Austin, Texas 78711-3087.

Figure: 30 TAC 290.47(h)

PUBLIC WATER SUPPLIER RESPONSE TO LOSS OF PRESSURE TO ALL OR PARTS OF THE DISTRIBUTION SYSTEM



*Dewatering occurs when the distribution system is depressurized to perform line repair or replacement.

Figure: 43 TAC §54.6

"It is our opinion, as of _____, that the financial plan contained in the proposer's proposal appears to be based on reasonable financial assumptions consistent with the level of analysis provided in the proposal, and as a result provides a reasonable basis for the further development of the proposal. It is our opinion that the financial plan, at the conceptual level, adequately identifies the source(s), type(s), amount(s), and schedule of financing based on conditions that currently prevail in the capital and debt markets, and which are contemplated at specific stages in the development of the proposal."

OPEN MEETINGS

Agencies with statewide jurisdiction must give at least seven days notice before an impending meeting. Institutions of higher education or political subdivisions covering all or part of four or more counties (regional agencies) must post notice at least 72 hours before a scheduled meeting time. Some notices may be received too late to be published before the meeting is held, but all notices are published in the *Texas Register*.

Emergency meetings and agendas. Any of the governmental entities listed above must have notice of an emergency meeting, an emergency revision to an agenda, and the reason for such emergency posted for at least two hours before the meeting is convened. All emergency meeting notices filed by governmental agencies will be published.

Posting of open meeting notices. All notices are posted on the bulletin board at the main office of the Secretary of State in lobby of the James Earl Rudder Building, 1019 Brazos, Austin. These notices may contain a more detailed agenda than what is published in the *Texas Register*.

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have an equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting summary several days prior to the meeting by mail, telephone, or RELAY Texas (1-800-735-2989).

Texas State Board of Public Accountancy

Tuesday, October 20, 1998, 2:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 950F
Austin

By Teleconference Ad Hoc Advisory Committee

AGENDA:

Advise Board Chairman on committee nominations.

All discussion of investigative files will be in Executive Session.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 12, 1998, 11:14 a.m.

TRD-9815941



Tuesday, October 20, 1998, 2:00 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 950F
Austin

By Teleconference Ad Hoc Advisory Committee

EMERGENCY MEETING AGENDA:

Advise Board Chairman on committee nominations.

Reason for emergency: This meeting is scheduled under section 551.045 of the Open Meeting Act because conflicting schedules of the committee members require a meeting at this time for the committee's recommendations to be presented for effective evaluation before the Board meeting on November 12, 1998. The schedule conflicts make it impossible for all committee members to be physically present.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 13, 1998, 2:55 p.m.

TRD-9816012



Thursday, October 22, 1998, 9:30 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 950F
Austin

Regulatory Compliance Committee

AGENDA:

- A. Discussion of Self-Directed Semi-Independent Project
- B. Update on Internal Audit and State Auditor's Management Control Audit
- C. Discussion of the Texas Legislative Council and the Public Accountancy Act
- D. Discussion of Historically Underutilized Business program

E. Agency Affirmative Action-Current Status

F. FY 1999 Salary Cap Expenditure Report

G. Status Report on FY 98 Annual Financial Report

All discussion of investigative files will be in Executive Session

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 12, 1998, 9:36 a.m.

TRD-9815928



Thursday, October 22, 1998, 1:30 p.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Executive Committee

AGENDA:

I. Litigation strategy development in connection with the American Express lawsuit. (Executive Session).

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 12, 1998, 11:14 a.m.

TRD-9815942



Friday, October 23, 1998, 9:00 a.m.

333 Guadalupe Street, Tower III, Suite 900, Room 910

Austin

Continuing Professional Education Committee

AGENDA:

A. Consideration of Lawrence F. Alwin's resignation

B. Consideration of the minutes from the Strategic Planning Meeting

C. Consideration of proposed ethics rule change

D. Consideration of training class for ethics course instructors

E. Consideration of a request from CPE Internet to register as a sponsor

F. Consideration of exemption requests from Gus Villalba, CPA and Richard Young, CPA

G. Consideration of CPE Audit results

H. Consideration correspondence from ValuED

I. Consideration of request for CPE Credit from Marlene Martin, CPA, Attorney at Law

J. Consideration of ethics courses: 1. Walter Austin, CPA and 2. Charles Hobbs, CPA

K. Consideration of the date of next meeting

All discussion of investigative files will be in Executive Session.

Contact: Amanda G. Birrell, 333 Guadalupe, Tower III, Suite 900,
Austin, Texas 78701-3900, 512/305-7848.

Filed: October 13, 1998, 1:52 p.m.

TRD-9816004



Texas Department of Agriculture

Thursday, October 29, 1998, 9:00 a.m.

State Office of Administrative Hearings, 1700 North Congress, Suite 1100

Austin

AGENDA:

Administrative hearing before the State Office of Administrative Hearing regarding SOAH Docket No. 551-98-1032 in the Matter of Texas Department of Agriculture vs. Joseph Ronald Savoie, concerning alleged violation of Texas pesticide laws.

Contact: Dolores Alvarado Hibbs, P.O. Box 12847, Austin, Texas 78711,
512/463-7541.

Filed: October 13, 1998, 2:37 p.m.

TRD-9816008



Texas Commission on Alcohol and Drug Abuse

Tuesday, October 27, 1998, 8:00 a.m.

9001 North IH-35, Suite 105, Hearing Room, Whitney Jordan Plaza at North IH-35 and Rundberg

Austin

Audit Committee

AGENDA:

Call to order; approval of fiscal year 1998 annual internal audit report; revision of audit plan for fiscal years 1999 and 2000; and adjournment.

Contact: Manny Cavazos, 9001 North IH-35, Suite 105, Austin, Texas 78753-5233, 512/349-6606.

Filed: October 12, 1998, 9:36 a.m.

TRD-9815926



Texas Alcoholic Beverage Commission

Wednesday, October 21, 1998, 1:30 p.m.

5806 Mesa Drive, Suite 185

Austin

AGENDA:

1:30 p.m. Call to order

Convene in open meeting

Announcement of executive session

1. Executive session:

a. briefing regarding operations of the general counsel's office; and

b. AMOT v. TABC

Continuing open meeting

2. Take action, including a vote, if appropriate on topics listed for discussion under executive session.

3. Recognition of agency employees with 20 or more years of service.

4. Approval of minutes of September 28, 1998 meeting, discussion, comment, possible vote.

5. Administrator's report.
6. Consider petition submitted by the City of Amarillo, Texas, under §109.35, Alcoholic Beverage Code, requesting permission to prohibit the possession of open containers and public consumption of alcoholic beverages in the central business district as defined by the map attached to the petition; discussion, comment, possible vote.
7. Consider amendment to 16 TAC §45.110 as published in 23 TexReg 9226-9227 on September 11, 1998, discussion, comment, possible vote. (Inducements)
8. Consider amendment to 16 TAC §45.113 as published in 23 TexReg 9227 on September 11, 1998; discussion, comment, possible vote. (Gift, Services and Sales)
9. Public comment.
10. Adjourn.

Contact: Doyne Bailey, P.O. Box 13127, Austin, Texas 78711, 512/206-3217.

Filed: October 13, 1998, 8:16 a.m.

TRD-9815985



Texas Board of Chiropractic Examiners

Thursday, October 15, 1998, 10:00 a.m.

333 Guadalupe, Tower III, Suite 825

Austin

Enforcement Committee

AGENDA:

The Enforcement Committee of the Texas Board of Chiropractic Examiners will meet to consider, discuss, take any appropriate action and/or approve.

A) 1. Informal Hearing 98-83, 98-106, 98-117, 98-141, 98-162, 98-167, 98-171, 98-172, 98-179.

2. Review cases 98-01 thru 98-203 and 99-01 thru 99-17

Contact: John F. Zavala, 333 Guadalupe, Tower III, Suite 825, Austin, Texas 78701, 512/305-6708.

Filed: October 7, 1998, 4:56 p.m.

TRD-9815682



Texas Court Reporters Certification Board

Friday, October 16, 1998, 6:30 p.m.

4424 Gaines Ranch Loop

Austin

Testing Committee

AGENDA:

According to the complete agenda, the Testing Committee of the Court Reporters Certification Board will meet to consider the following: call to order; attendance of the Testing Committee; approval of the minutes from the last meeting; discuss and possibly act on future test readers and/or future oral tests; discuss and possibly act on proposed exam statistics policy; consider and possible act on proposed exam forms for 1999; discuss and possibly act on general correspondence; and adjourn.

Contact: Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, 512/463-1747.

Filed: October 8, 1998, 3:52 p.m.

TRD-9815802



Saturday, October 17, 1998, 9:00 a.m.

Committee Room #2, Fifth Floor, William P. Clements State Office Building, 300 West 15th Street

Austin

Board

AGENDA:

The Texas court Reports Certification Board will meet to consider the following: call to order; approval of minutes from last meeting; conduct formal disciplinary hearings in Cause Numbers 98-1238-15, 98-0845-21 and 98-1883-24; conduct reinstatement hearing relating to File Number 913; consideration and possible action on preliminary reviews in Cause Numbers 98-5696-25, 98-2096-26, 98-2559-27 and 98-F003; consideration and possible action concerning agreed final order in Cause No. 98-5309-09; consideration and possible action regarding existing final orders in Cause Numbers 97-3143-07 and 98-6152-06; consideration and possible action regarding the Court Reporting Curriculum Committee action item of reviewing a new court reporting institution curriculum; consideration and possible action regarding Testing Committee action items; consideration and possible action on the proposed Uniform Format Manual for Texas Court Reports; discussion and consideration with possible action regarding applicants convicted of a criminal offense in File Numbers 7502, 7530, 7539 and 7551; discussion, consideration and possible action on general correspondence; discussion, consideration and possible action on Attorney General Letter Opinion No. 98-075; discussion, consideration and possible action on revising formal hearings notice and meeting relating to Et Al World Wide Litigation Support Services; discussion, consideration and possible action on board vacancies; consideration and possible action on administrative action items; agency operating budget with expenses year-to-date and Fourth Quarter/Annual Measures Report; set next board meeting; and adjourn.

Contact: Peg Liedtke, 205 West 14th Street, Suite 101, Austin, Texas 78701, 512/463-1747.

Filed: October 9, 1998, 2:47 p.m.

TRD-9815889



Texas Department of Criminal Justice

Wednesday, October 21, 1998, 1:00 p.m.

Sam Houston State University, Criminal Justice Conference Center, Criminal Justice Center Courtroom

Huntsville

Judicial Advisory Council

AGENDA:

Field Service Committee

I. Funding Priorities for Deobligated Funds

II. Code of Ethics for Residential Services

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangement can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Capitol Station, Austin, Texas 78711, 512/305-9323.

Filed: October 12, 1998, 3:50 p.m.

TRD-9815969



Wednesday, October 21, 1998, 1:30 p.m.

Sam Houston State University, Criminal Justice Conference Center, Criminal Justice Center Courtroom

Huntsville

Judicial Advisory Council

AGENDA:

Legislative Committee

I. Minimum Term of Misdemeanor Community Supervision

II. Full Misdemeanor Funding

III. Position of the TDCJ Board for JAC Chairman

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangement can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Capitol Station, Austin, Texas 78711, 512/305-9323.

Filed: October 12, 1998, 3:50 p.m.

TRD-9815968



Wednesday, October 21, 1998, 2:00 p.m.

Sam Houston State University, Criminal Justice Conference Center, Criminal Justice Center Courtroom

Huntsville

Judicial Advisory Council

AGENDA:

I. Greeting and Introduction of Guests/Staff

II. Approval of Minutes

III. Board of Pardons and Paroles

IV. TBCJ Board Liaison

V. Texas Association of Drug Diversion Courts

VI. Public Attitude Toward Crime and the Criminal Process

VII. Programs and Services Division Update

VIII. Office of the General Counsel

IX. Probation Advisory Committee Report

X. Fiscal Issues Committee Report

XI. Committee Reports

A. Field Services

B. Legislative

XII. Division Director's Update

XIII. Council Member Issues

XIV. Next Meeting

XV. Adjourn

Person with disabilities who plan to attend this meeting and who need auxiliary aids or services as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are required to contact the agency prior to the meeting so that appropriate arrangement can be made.

Contact: Lois A. Warncke, P.O. Box 12427, Capitol Station, Austin, Texas 78711, 512/305-9323.

Filed: October 12, 1998, 3:50 p.m.

TRD-9815967



Texas Diabetes Council

Friday, October 23, 1998, 9:00 a.m.

Tower Building, Room T-607, Texas Department of Health, 1100 West 49th Street

Austin

AGENDA:

The council will meet to discuss and possibly act on: approval of the minutes of the July 17, 1998, meeting to include approval of any revisions to the April 17, 1998, minutes; briefing for the upcoming legislative session; director's report (senate Bill 162, 75th Legislature (Diabetes Medicaid and pilot program); and Senate Bill 163, 75th Legislature (insurance reimbursement) status report on funding and the budget (fiscal year 1999 initiatives); presentation ("Diabetes and Metabolism"; Diabetes and Nutrition"; and Diabetes and New Nutrition Research") status report on Diabetes projects (community-based diabetes programs; school health program; diabetic eye disease program; Diabetes eye program/South Texas Hospital Diabetes foot program/South Texas Hospital and the public information campaign) and public comments.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Amy Pearson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7490.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816062



Texas Education Agency

Monday, November 2, 1998, 8:30 a.m.

Double Tree Hotel, 6505 IH-35 North, Phoenix South

Austin

Continuing Advisory Committee (CAC) for Special Education

AGENDA:

Monday, November 2, 1998, beginning at 8:30 a.m., the CAC will hear welcoming remarks and approve the minutes from the September

2, 1998, meeting. The CAC will open the floor for public comment. Beginning at 9:15 a.m., the CAC will discuss subcommittee activities and set future meeting dates and agendas. Beginning at 9:30 a.m., the CAC will break into the following subcommittees: Accountability/Monitoring, Parental Support, and Alternative. Beginning at 1:00 p.m., the CAC will break into the following subcommittees; Communication, Professional Development, and Reading. Beginning at 3:00 p.m., the CAC will hear reports from subcommittee chairpersons. Beginning at 3:45 p.m., the CAC will discuss the CAC Annual Report. The CAC will hear closing remarks and adjourn.

Contact: Rex Shipp, 1701 North Congress Avenue, Austin, Texas 78701, 512/463-9414.

Filed: October 14, 1998, 11:14 a.m.

TRD-9816086



Advisory Commission on State Emergency Communications

Thursday, October 15, 1998, 10:00 a.m.

333 Guadalupe, Room 100

Austin

Executive Committee Meeting

AGENDA:

The Committee will call the meeting to order and recognize guest; hear public comment; hear reports, discuss and take Committee action, as necessary; Executive Director's Self Evaluation for Fiscal Year 1998; Wireless Service Fee Proportional Distribution; State Auditor's Office Review of State Agency Internal Audit Functions; 9-1-1 Day Appreciation Plans. The Commission may meet in Executive Session on any of the items as authorized per Texas Open Meetings Act, and pursuant to Government Code, 551, Subchapter D, 551.071, consultation with staff attorney on pending or contemplated litigation or to seek legal advice. Adjourn.

Persons requesting interpreter services for the hearing and speech-impaired should contact Velia Williams at 512/306-6933 at least two working days prior to the meeting.

Contact: Velia Williams, 333 Guadalupe Street, Austin, Texas 78701, 512/306-6933.

Filed: October 7, 1998, 4:08 p.m.

TRD-9815676



Employees Retirement System of Texas

Wednesday, October 21, 1998, 9:00 a.m.

ERS Auditorium, 18th and Brazos

Austin

ERS Audit Committee

AGENDA:

1. Presentation of the Audit of the Benefit Payments Section Within Benefit Operations
2. Presentation of the Audit of the Investment Accounting Section in Finance and Administration
3. Presentation of the Audit of the Research and Portfolio Section in the Investments Division

4. Presentation of Audit Special Projects for Fiscal Year 1998

5. Adjournment

Contact: William S. Nail, 18th Street and Brazos, Austin, Texas 78701, 512/867-3178.

Filed: October 13, 1998, 3:47 p.m.

TRD-9816020



Wednesday, October 21, 1998, 9:00 a.m.

ERS Auditorium, 18th and Brazos

Austin

ERS Board of Trustees

AGENDA:

Contact: William S. Nail, 18th Street and Brazos, Austin, Texas 78701, 512/867-3178.

Filed: October 13, 1998, 3:47 p.m.

TRD-9816019



Tuesday, November 10, 1998, 9:30 a.m. (Orientation) and 1:30 p.m. (Meeting)

ERS Auditorium, 18th and Brazos, Auditorium, First Floor

Austin

Group Benefits Advisory Committee

AGENDA:

1. Call to Order;
2. Introduction of GBAC Members;
3. Recognition of visitors and guests;
4. Approval of Minutes from Previous Meeting;
5. Announcements/Updates;
6. ERS Update;
7. Subcommittee Reports;
8. Other Related Benefits Business;
9. Election of Officers;
10. Adjourn.

Contact: James W. Sarver, 18th Street and Brazos, Austin, Texas 78701, 512/867-3217.

Filed: October 9, 1998, 8:43 a.m.

TRD-9815819



State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments

Friday, October 23, 1998, 11:00 a.m.

Room 1264, 12th Floor, William P. Hobby Building, 333 Guadalupe Street

Austin

Rules Subcommittee

REVISED AGENDA:

The subcommittee chairperson will introduce guests and elicit comments and the subcommittee will discuss and possibly act on: rules (22 TAC Chapter 141) regarding the requirements for temporary training permit holders that fail the written and/or practical examination; a revision to the definition of direct supervision in 22 TAC §141.2; Audiology Practice Inc. vs. State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Texas Department of Health and Dr. William R. Archer III, Commissioner of the Board

of Health and possibly act on 22 TAC §141.16(g)(3) concerning the dBA equivalent maximum allowable ambient noise level when audiometric testing is not conducted in a stationary acoustical enclosure; a plan to revise 22 TAC, Chapter 141 in its entirety; consideration and possible action on petition of Audiology Practices, Inc. to amend 22 TAC §141.2 and §141.16 such that the 30-day trail period is consecutive and within a 60-day time period; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6784.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816068



Friday, October 23, 1998, 3:00 p.m.

Room 1264, 12th Floor, William P. Hobby Building, 333 Guadalupe Street

Austin

REVISED AGENDA:

The committee will introduce guests and discuss and possibly act on: approval of the minutes of the April 24, 1998, meeting; Audiology Practices, Inc. vs. State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments, Texas Department of Health, and Dr. William R. Archer III, Commissioner of the Board of Health and possibly act on 22 TAC §141.16(g)(3) concerning the dBA equivalent maximum allowable ambient noise level when audiometric testing is not conducted in a stationary acoustical enclosure; Applications Subcommittee report (application of Izola Hayman); Continuing Education Subcommittee report (waiver of continuing education hours for Norman Warren and Marvin Hampton; and Brown Hearing Aid Center's request for designation as a non-manufacture sponsor for continuing education); Complaints Subcommittee report (complaints FD 96-0024; FD 96-0025; FD 96-0026; FD 97-0008; FD 97-0027; FD 98-0003; FD 98-0006; FD 98-0007; FD 98-0013; FD 98-0016 - FD 98-0025); Rules Subcommittee report (rules (22 TAC, Chapter 141) regarding the requirements for temporary training permit holders that fail the written and/or practical examination; revisions to the definition of direct supervision in 22 TAC §141.2; a plan to revise 22 TAC, Chapter 141 in its entirety and consideration and possible action on petition of Audiology Practices, Inc. to amend 22 TAC §141.2 and §141.16 such that the 30 days trail period is consecutive and within a 60-day time period.); Examination Subcommittee report (revisions to score sheet and audiogram used for a practical examination); professional licensing and certification division director's report; president report; executive director's report; setting of meeting and examination dates for 1999; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Bobby Schmidt, 1100 West 49th Street, Austin, Texas 78756, 512/834-6784.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816067



General Services Commission

Wednesday, October 21, 1998, 10:30 a.m.

505 Barton Springs, Suite 1325

Austin

Vendor Advisory Committee

AGENDA:

I. Call to order. II. Approval of Minutes. III. Presentation on vendor participation in the state procurement training program. IV. Consideration and potential action on proposal for staggered membership terms. V. Update and Progress Report from the Purchasing Process, Sourcing/HUB, and Communications Subcommittees. VI. Other Discussion. VII. Adjourn.

Contact: Judy Ponder, 1711 San Jacinto, Austin, Texas 78701, 512/463-3960.

Filed: October 9, 1998, 2:47 p.m.

TRD-9815892



Office of the Governor

Friday, October 23, 1998, 9:00 a.m.

Moody Gardens, One Hope Boulevard

Galveston

Texas Governor's Committee on People with Disabilities

AGENDA:

1. Call to order/introductions/housekeeping/recognition of local guests/approval of minutes
2. Public comments
3. Executive Director's Report
4. Committee Members' Report
5. committee Ex Officio Representatives Reports
6. Discussion/Action: Policy Recommendations for 1999 Long-Range State Plan for Texans with Disabilities
7. Invited Associations and Local Committee Personations
8. Discussion/Action: 1999 Objectives and Focus Groups
9. Focus Group Breakout
10. Focus Group Reports
11. Adjournment

Contact: Pat Pound, 1100 San Jacinto, #142, Austin, Texas 78701, 512/463-5742.

Filed: October 13, 1998, 3:24 p.m.

TRD-9816016



Texas Department of Health

Thursday, October 15, 1998, 8:30 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Strategic Management Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 10, 1998, meeting; recent audit activities; approval of the 1999 internal audit plan; approval of the 1998 fee review; acceptance of a gift with a value of \$500 or more from the American Acquired Immune Deficiency Syndrome (AIDS) Foundation of Dallas; Office of Border Health update; Office of Governmental Regulations Legislative update; and strategic financial issues.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:20 p.m.

TRD-9815665



Thursday, October 15, 1998, 9:30 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Health and Clinical Services Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 10, 1998, meeting; and a proposed amendment and new rule concerning general requirements for annual reports by manufacturers of tobacco products and the security of proprietary tobacco information.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:20 p.m.

TRD-9815666



Thursday, October 15, 1998, 9:45 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Human Resources Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 10, 1998, meeting; proposed rules concerning (the Kidney Health Care Advisory Committee; the Scientific Advisory Committee on Birth Defects in Texas; and the Texas HIV Medication Advisory Committee); and for discussion program and budget briefings for the South Texas Hospital, Harlingen, and the Texas Center for Infectious Disease, San Antonio.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights

at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:20 p.m.

TRD-9815667



Thursday, October 15, 1998, 10:45 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Regulatory Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 10, 1998, meeting; proposed rules concerning (licensing of end stage renal disease facilities; and repeal, amendments, and new rules on worker right-to-know related to hazardous chemicals in public employer workplaces); final adoption of rules concerning (the licensure of governmental employed noncommercial pesticide applicators involved in health-related pest control; and a memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions under the Texas Radiation Control Act); and rules for discussion (proposed rule concerning certification of mammography systems an accreditation of mammography facilities under the Texas Radiation Control Act; proposed repeal of a rule concerning licensing requirements for near-surface land disposal of radioactive waste under the Texas Radiation Control Act; proposed rule concerning licensing of naturally occurring radioactive material (NORM) under the Texas Radiation Control Act; repeal of a memorandum of understanding concerning in situ uranium mining between the Texas Department of Health and the Texas Department of Water Resources under the Texas Radiation Control Act; proposed repeal of a rule concerning the Texas Atomic Energy Commission regulatory transfer agreement under the Texas Radiation Control Act; proposed rule concerning radiation safety requirements and licensing and registration procedures for industrial radiography under the Texas Radiation Control Act; proposed rule concerning hearing and enforcement procedures under the Texas Radiation Control Act; and proposed rules concerning community right-to-know related to hazardous chemicals in manufacturing, public employer, and nonmanufacturing facilities.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:20 p.m.

TRD-9815668



Friday, October 16, 1998, 8:30 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Board Briefing Meeting

AGENDA:

The board will meet to discuss and possibly act on: briefing by the Commissioner on current activities of the Texas Department of Health; and a discussion concerning procedural and/or administrative issues of the Board of Health.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:21 p.m.

TRD-9815669



Friday, October 16, 1998, 8:30 a.m.

Presidential Board Room-Second Floor, Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Health Financing Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the September 11, 1998, meeting and final adoption of rules concerning Medicaid early and periodic screening, diagnosis, and treatment (Texas Health Steps) dental services.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:21 p.m.

TRD-9815670



Thursday, October 16, 1998, 10:30 a.m.

Auditorium-Texas State Technical College, Science and Technology Building, 2424 Boxwood

Harlingen

Texas Board of Health

AGENDA:

The board will introduce guest and will meet in open session to discuss and possibly act on: approval of the minutes of the September 11, 1998, meeting; commissioner's report; resolution in recognition of national Epilepsy month; report on the activities of Public Health Region 11-Strategic Management Committee report (approval of the 1999 internal audit plan; approval of the 1998 fee review; and acceptance of a gift with a value of \$500 or more from the American Acquired Immune Deficiency Syndrome (AIDS) Foundation of Dallas); Health Financing Committee report (final adoption of rules concerning Medicaid early and periodic screening, diagnosis, and treatment (Texas Health Steps) dental services; Health and Clinical Services Committee report (proposed amendment and new rule concerning general requirements for annual reports by manufacturers of tobacco products and the security of proprietary tobacco information); Human Resources Committee

report (proposed rules concerning the Kidney Health Care Advisory Committee; the Scientific Advisory Committee on Birth Defects in Texas; and the Texas HIV Medication Advisory Committee); Regulatory Committee report (proposed rules concerning (licensing of end stage renal disease facilities; and repeal, amendments, and new rules concerning worker right-to-know related to hazardous chemicals in public employer workplaces); and final adoption of rules concerning (licensure of governmental employed noncommercial pesticide applicators involved in health-related pest control; and a memorandum of understanding between the Texas Department of Health and the Texas Natural Resource Conservation Commission regarding radiation control functions under the Texas Radiation Control Act)); public comments; announcement/comments; and setting a board meeting date for January, 1999. The board will then meet in executive session to discuss a personnel appointment of Assistant Deputy Commissioner for Policies, Deputyship for Community Health and Prevention. The board will then return to open session to approval and act on a personnel appointment of Assistant Deputy Commissioner for Policies, Deputyship for Community Health and Prevention.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Kris Lloyd, 1100 West 49th Street, Austin, Texas 78756, 512/458-7484.

Filed: October 7, 1998, 3:21 p.m.

TRD-9815671



Friday, October 30, 1998, 8:00 a.m.

Main Building, Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

Reimbursement and Compliance Subcommittee of the Osteoporosis Advisory Committee

AGENDA:

The subcommittee will meet to discuss and possibly act on: compliance by group insurance with Senate Bill 602 and the impact on long-term care budgets; recommendation to new Medicare ruling regarding Medicare reimbursement and self referrals; and other business not requiring action.

To request an accommodation under the ADA, please contact Suzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Anne E. Williamson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7324.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816061



Friday, October 30, 1998, 9:30 a.m.

Main Building, Room G-107, Texas Department of Health, 1100 West 49th Street

Austin

Osteoporosis Advisory Committee

AGENDA:

The committee will meet to discuss and possibly act on: approval of the minutes of the July 31, 1998, meeting; report from the Subcommittee on Reimbursement and Compliance to include (compliance by group insurance with Senate Bill 602 and the impact on long-term care budgets; and recommendation to new Medicare reimbursement and self referrals); summit evaluation; development of the Osteoporosis Prevention Foundation and Research Institute; new reports needed for publication; summary of the economic impact of the Osteoporosis Awareness and Education Program; annual report; strategic planning (collaboration); development of the Osteoporosis Awareness and Education Program; educating physicians and the general public regarding the Osteoporosis Awareness and Education Program; and how to market the program); and other business not requiring action.

To request an accommodation under the ADA, please contact Suzzanna C. Currier, ADA Coordinator in the Office of Civil Rights at 512/458-7627 or TDD at 512/458-7708 at least four days prior to the meeting.

Contact: Anne E. Williamson, 1100 West 49th Street, Austin, Texas 78756, 512/458-7324.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816060



Texas Health Care Information Council

Thursday, October 22, 1998, 2:00 p.m.

Brown-Healy Building, Room 1410, 4900 North Lamar

Austin

Health Maintenance Organization Technical Advisory Committee

AGENDA:

The Texas Health Care Information Council's Health Maintenance Organization (HMO) Technical Advisory Committee will convene in open session, deliberate, and possibly take formal action on the following items: Call to order; Approval of minutes; Review of Non-Hospital Data Committee meeting; Discussion and recommendation of changes to how "point of service" data will be report due to HEDIS changes; Discussion and recommendation concerning development of standards for dental HMO data collection efforts; Discussion and recommendation relating to review of THIC and Medicaid information reporting and requests; Discussion and recommendation concerning the definition of "service area" for data collection and reporting purposes; Review of the HMO conference agenda: Review, discussion and recommendation relating to survey of resource costs and feedback from the health plans regarding first year collection efforts; Adjourn.

Contact: Jim Loyd, 4900 North Lamar, OOL-3407, Austin, Texas 78751, 512/424-6492 or fax 512/424-6491.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816059



Texas Healthy Kids Corporation

Tuesday, October 20, 1998, 9:30 a.m.

333 Guadalupe, Hobby Tower One, Room 1264

Austin

Board of Directors

AGENDA:

Call to order; approval of minutes of September 22, 1998 meeting. THKC staff presentation, possible recommendations, and possible THKC Board deliberation and action/approval regarding:

Status update and briefing on enrollment, contract status, outreach, fundraising, evidence of insurability screenings, issuance of requests for proposals and other program-related activities;

Creating/adjusting policies for use of funds designated for premium assistance, including time period for which each child will be awarded premium assistance, dividing unrestricted funds among population covered by each health plan, related matters;

Creating/adjusting policies relating to Texas employers who do not offer coverage for children in their health benefit plans; report relating to research on "crowd out" issues;

Designation November meeting of the Board as Annual Meeting, at which new officers will be elected to serve until September 1, 1999, when the terms of the six governing-appointed Board members expired; review of officer election procedures;

Preparation of THKC's biennial report required by House Bill 3;

Miscellaneous corporate operation issues, including timelines, future meetings, general update, other administrative, procedural matters.

Public Comment

The THKC board may meet in Executive Session in accordance with the Texas Open Meetings Act to discuss any matters appropriate for an Executive Session.

Persons with disabilities who require auxiliary aids, services, or materials in alternate format, please contact THKC at least 3 business days the meeting.

Contact: Tyrette Hamilton, P.O. Box 1506, Austin, Texas 78767-1506, 512/494-0061 or fax 512/494-0278.

Filed: October 12, 1998, 4:26 p.m.

TRD-9815980



Texas Higher Education Coordinating Board

Friday, October 16, 1998, 2:00 p.m.

Chevy Chase Office Complex, Building 5, Room 5.240, 7745 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

Discussion of reports and recommendations to be presented at the October 1998 Coordinating Board meeting. The meeting will be held by telephone conference call pursuant to the provisions of Texas Government Code, Section 551.125, since the convening at one location of a quorum of the Board is difficult or impossible.

Contact: Lynn Rodriguez, P.O. Box 12788, Austin, Texas 78711, 512/483-6163.

Filed: October 12, 1998, 8:58 a.m.

TRD-9815924



Thursday, October 22, 1998, 8:30 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Committee of the Whole

AGENDA:

Consideration of report and recommendations relating to House Bill 2146, 75th Legislature, requiring the Coordinating Board to complete a study of the effects of the Hopwood decision and institutional actions on minority participation in higher education.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815750



Thursday, October 22, 1998, 9:15 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Community and Technical Colleges Committee

AGENDA:

Consideration of matters relating to community and technical colleges (see attached agenda)

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815752



Thursday, October 22, 1998, 9:45 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Universities Committee

AGENDA:

Consideration of matters relating universities. (see attached agenda)

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815753



Thursday, October 22, 1998, 10:45 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Education Preparation Improvement Committee

AGENDA:

Report on the Committee's work

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815754



Thursday, October 22, 1998, 11:00 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Committee on Higher Education in Southern Dallas County

AGENDA:

Consideration of the Committee's report and recommendations.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815755



Thursday, October 22, 1998, 12:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Board

AGENDA:

The Board will meet in executive session to discuss pending or contemplated litigation.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815756



Thursday, October 22, 1998, 1:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Special Committee on the Higher Education Needs of Central Texas Area North Austin

AGENDA:

Consideration of a proposal from the Texas A&M University System and Tarleton State University to establish a university system center in Bell County.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815757



Thursday, October 22, 1998, 1:30 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Health Affairs Committee

AGENDA:

Consideration of approval and certification of adequacy of financial for new degree programs and administrative changes:

The University of North Texas Health Science Center at Fort Worth-Establish a School of Public Health, create a Doctor of Public Health (DrPH) degree with a major in Public Health Practice, and create a program in Biostatistics leading to the existing Master Public Health (MHP) degree.

The University of Texas at Dallas-Master of Science in Medical Management (MS) degree for licensed physicians.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815758



Thursday, October 22, 1998, 2:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Campus Planning Committee

AGENDA:

Consideration of matters relating to campus planning. (see attached agenda)

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815759



Thursday, October 22, 1998, 3:00 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Access and Equity Committee

AGENDA:

Consideration of report on the representation of women and minorities in Texas public higher education prepared in accordance with General Appropriations Act, Section 21, page III-47, 75th Legislature and the Access and Equity 2000 Plan.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:47 a.m.

TRD-9815751



Thursday, October 22, 1998, 3:15 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Research Committee

AGENDA:

Report on the recommendations of the Texas Council on Science and Technology.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815760



Thursday, October 22, 1998, 3:30 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Student Services Committee

AGENDA:

Report on loans, grants, and special program awards made by the Student Services Division.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815761



Thursday, October 22, 1998, 3:45 p.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Administration and Financial Planning Committee

AGENDA:

Consideration of report of a study on institutional funds at health-related institutions, pursuant to Section 40, page III-51 of the General Appropriations Act, 75th Legislature; Report on a study of the programs and other efforts of higher education to address the needs of small business for assistance in research, development, and prototyping, pursuant to Senate Bill 1040, 75th Legislature; and Consideration of authorizing the issuance of up to \$75 million student loan bonds at the January 1999 meeting of the Board.

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815762



Friday, October 23, 1998, 8:30 a.m.

Chevy Chase Office Complex, Building 1, Room 1.100, 7700 Chevy Chase Drive

Austin

Coordinating Board Meeting

AGENDA:

Approval of Minutes of July 17, 1998, meeting; Consideration of matters relating to the Committee on Community and Technical Colleges; the Committee on Universities; the Committee on Educator Preparation Improvement; the Committee on Higher Education Needs in Southern Dallas County; the Special Committee on the Higher Education Needs of the Central Texas Area North of Austin; the

Committee on Health Affairs; the Committee on Campus Planning; the Committee on Access and Equity; the Committee Research; the Committee on Student Service; the Committee on Administration and Financial Planning; Consideration on matters relating to Board Operations and Legislative Agenda; and Reports to the Board. (see attached agenda)

Contact: Don W. Brown, P.O. Box 12788, Capitol Station, Austin, Texas 78711, 512/483-6101.

Filed: October 8, 1998, 10:48 a.m.

TRD-9815763



Texas State Affordable Housing Corporation

Thursday, October 15, 1998, 11:00 a.m.

1715 West 35th Street

Austin

General Planning Session

AGENDA:

The Board and Staff of Texas Affordable Housing Corporation will meet to hold a Planning Session regarding the General Administration and Operations of the Corporation

Individuals who require auxiliary aids or services for this meeting should contact Susan Caldwell at 512/377-3555, Ext. 416 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan Caldwell, 1715 West 35th Street, Austin, Texas 78703, 512/377-3555, Ext. 414.

Filed: October 8, 1998, 4:53 p.m.

TRD-9815810



Thursday, October 15, 1998, 3:00 p.m.

1715 West 35th Street

Austin

Board Meeting

AGENDA:

The Board of Texas State Affordable Housing Corporation will meet to consider and possibly act on:

Presentation, Discussion and Possible Approval of Minutes of Board Meeting of September 11, 1998

Presentation, Discussion and Possible Approval of General Terms and Structure of Loans to Provide 2nd and 3rd Lien Financing to Construct Three (3) Independent Senior Living Care Facilities in Wharton, Bellville and Sealy.

Presentation, Discussion and Possible Approval of Investment Policy

Executive Session- Personnel Matters; Consultation with attorney under Sec. 551.071(2) of Texas Government Code; Anticipated Litigation (potential or threatened); Litigation Settlement; Action in Open Session on Items Discussed in Executive Session; Adjourn

Individuals who require auxiliary aids or services for this meeting should contact Susan Caldwell at 512/377-3555, Ext. 416 at least two days before the meeting so that appropriate arrangements can be made.

Contact: Susan Caldwell, 1715 West 35th Street, Austin, Texas 78703, 512/377-3555, Ext. 414.

Filed: October 8, 1998, 4:53 p.m.

TRD-9815811



Texas Department of Housing and Community Affairs

Friday, October 16, 1998, 8:30 a.m.

507 Sabine Street, Room 437

Austin

Audit Committee Meeting

REVISED AGENDA:

The Audit Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on:

Approval of Minutes of Audit Committee Meeting of August 14, 1998

Approval of Annual Internal Audit Report

Report Items on Year 2000; Annual Audit Plan/Internal And External Audits

Adjourn

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas 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.

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 2:03 p.m.

TRD-9815785



Friday, October 16, 1998, 9:15 a.m.

507 Sabine Street, Room 437

Austin

Finance Committee Meeting

AGENDA:

The Finance Committee of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

Approval of Minutes of Finance Committee Meeting of September 29, 1998

Resolution Approving Final Documents Relating to Issuance of Tax-Exempt Residential Mortgage Revenue Bonds Series 1998A, 199B and Series 1999A and other related matters

Resolution Approving Additional Authority for Tax-Exempt Commercial Paper Notes Series A (Non AMT) and Series B (AMT) and other related matters

Resolution approving Extension of Origination Period for the Single Family Mortgage Revenue Bond Series 1996A (program 49) and Series 1996D/E (program 51) and other related matters

Approval of One or More Inducement Resolutions Declaring Intent to Issue Multi-Family Housing Mortgage Revenue Bonds for Projects Throughout the State of Texas and Authorizing the Filing of Related Applications for the Allocation of Private Activity Bonds with the Texas Board Review Board and Other Related Matters

Approval of Fourth Quarter Investment Report

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas 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.

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 2:03 p.m.

TRD-9815787

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Friday, October 16, 1998, 10:15 a.m.

507 Sabine Street, Room 437

Austin

Low Income Housing Tax Credit Committee Meeting

AGENDA:

The Low Income Housing Tax Credit Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

Minutes of Low Income Housing Tax Committee Meeting of August 14, 1998

Approval of Additional Tax Credits for Project #98049, San Antonio Seniors Apartments

Approval of Commitment Notice for Projects on the Waiting List

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas 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.

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 3:09 p.m.

TRD-9815788

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Friday, October 16, 1998, 10:45 a.m.

507 Sabine Street, Room 437

Austin

Programs Committee Meeting

AGENDA:

The Programs Committee of the Board of Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

Minutes of Programs Committee Meeting of September 29, 1998

Approval of 1998 Housing Trust Fund Multi-Family Awards

Approval of Amendment to Housing Trust Fund Capacity Building Contract

Approval of Conversion of Contracts for Deed with 1994 Junior Lien Acquisition Funds and HOME Program Funds

Approval of Additional HOME Program Funds for San Antonio Apartments Project

Approval of Amendments to HOME Program Contracts

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas 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.

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 3:10 p.m.

TRD-9815795

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Friday, October 16, 1998, 10:45 a.m.

507 Sabine Street

Austin

Programs Committee Meeting

REVISED AGENDA:

The Programs Committee of the Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act on the following:

PLEASE ADD:

Approval of HOME Program Contract Awards for Interim Construction Funding

Individuals who require auxiliary aids or services for this meeting should contact Gina Arenas 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.

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 3:10 p.m.

TRD-9815797

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Friday, October 16, 1998, 1:30 p.m.

507 Sabine Street, Room 437

Austin

Board Meeting

REVISED AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon:

Minutes of Programs Committee Meeting of September 29, 1998

Approval of 1998 Housing Trust Fund Multi-Family Awards

Approval of Amendment to Housing Trust Fund Capacity Building Contract

Approval of Conversion of Contracts for Deed with 1994 Junior Lien Acquisition Funds and HOME Program Funds

Approval of Additional HOME Program Funds for San Antonio Apartments Project

Approval of Amendments to HOME Program Contracts

Resolution Approving Final Documents Relating to Issuance of Tax-Exempt Residential Mortgage Revenue Bonds Series 1998A, 199B and Series 1999A and other related matters

Resolution Approving Additional Authority for Tax-Exempt Commercial Paper Notes Series A (Non AMT) and Series B (AMT) and other related matters

Resolution Approving Extension of Origination Period for the Single Family Mortgage Revenue Bond Series 1996A (program 49) and Series 1996D/E (program 51) and other related matters

Approval of One or More Inducement Resolutions Declaring Intent to Issue Multi-Family Housing Mortgage Revenue Bonds for Projects Throughout the State of Texas and Authorizing the Filing of Related Applications for the Allocation of Private Activity Bonds with the Texas Board Review Board and Other Related Matters

Approval of Fourth Quarter Investment Report

Approval of Annual Internal Audit Report

Report Items on Year 2000; Annual Audit Plan/Internal And External Audits

Executive Session Re: Personnel Matters Regarding Duties and Responsibilities in Relationship to Budget under Sec. 551.074, Texas Government Code Litigation and Anticipated Litigation (Potential or Threatened under Sec 551.071 and 551.103, Texas Government Code Litigation Exception)

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 3:09 p.m.

TRD-9815790



Friday, October 16, 1998, 1:30 p.m.

507 Sabine Street, Room 437

Austin

Board Meeting

REVISED AGENDA:

The Board of the Texas Department of Housing and Community Affairs will meet to consider and possibly act upon:

PLEASE ADD:

Approval of HOME Program Contract Awards for Interim Construction Funding

Adjourn

Contact: Daisy Stiner, 507 Sabine, #900, Waller Creek Office Building, Austin, Texas 78701, 512/475-3934.

Filed: October 8, 1998, 3:10 p.m.

TRD-9815798



Texas Department of Human Services

Friday, October 16, 1998, 10:00 a.m.

701 West 51st, East Tower, Public Hearing Room

Austin

Texas Board of Human Services

AGENDA:

1. Approval of the Minutes of August 21, 1998. 2. Child and Adult Care Food Program (CACFP): Tolerance Levels in the Administrative Sanctions Process for Reviews of Family Day Care Home Sponsoring Organizations. 3. Adoption of Amendments to the Licensure Rules for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICFMR/RC) Regarding Enforcement and Trustees for Facilities. 4. Revised Rules on Abuse and Neglect Investigations in the Licensing Standards for Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICFMR/RC). 5. Amendments to the Licensure Rules for Nursing Facility Administrators Regarding Fees, Provisional Licensure, and Academic Requirements. 6. Amendments to Policies and Procedures. 7. Budget Adjustments. 8. Commissioner's Report: a. Announcements and Comments. b. Tracking of Board Action Items. 9. As authorized by the Texas Open Meetings Act, Government Code, §551.074, the Board will meet in executive session for the Commissioner's annual evaluation. 10. The Board will reconvene in open session to take action, if necessary, resulting from discussion in executive session.

Contact: Sherron Heinemann, P.O. Box 149030, Austin, Texas 78714-9030, 512/438-3048.

Filed: October 7, 1998, 4:15 p.m.

TRD-9815680



Wednesday, October 21, 1998, 10:00 a.m.

John H. Winters Building, 701 West 51st, Room 125

Austin

Nursing Facility Administrators Advisory Committee

AGENDA:

1. Review minutes from September meeting. 2. Review of Case Action Items. 3. Special Issues.

The NFAAC Subcommittee on Education for NFAs will meet BEFORE the NFAAC meeting at 9:00 a.m.

Contact: Jerry Walker, P.O. Box 149030, Austin, Texas 78714-9030, 512/834-6681.

Filed: October 8, 1998, 3:09 p.m.

TRD-9815793



Texas Judicial Council

Wednesday, October 28, 1998, 2:00 p.m.

Capitol Extension Building, Room E2.020

Austin

Committee on Strategic Planning

AGENDA:

I. Commencement of Meeting

II. Attendance of Members

III. Overview of Background Resources

IV. Invited and Public Testimony

V. Other Business

VI. Adjourn

Contact: Slade Cutter, Capitol Extension Building, Room E2.020,
Austin, Texas 78701, 512/463-1461.
Filed: October 14, 1998, 12:01 p.m.

TRD-9816098



Monday, November 12, 1998, 1:00 p.m.

Capitol Extension Building, Room E2.020

Austin

Committee on Trail Court Reorganization

AGENDA:

I. Commencement of Meeting

II. Attendance of Members

III. Overview of Background Resources

IV. Identify and Discuss Issues to be Addressed by Committee

V. Other Business/Next Meeting

VI. Adjourn

Contact: Slade Cutter, Capitol Extension Building, Room E2.020,
Austin, Texas 78701, 512/463-1461.
Filed: October 14, 1998, 12:01 p.m.

TRD-9816099



Texas Juvenile Probation Commission

Friday, October 16, 1998, 3:00 p.m.

4900 North Lamar, Room 1430

Austin

TJPC/TYC Joint Board Meeting

AGENDA:

Call to order; approve minutes; excuse absences; introduce new TJPC joint board member; hear report from CJPC; hear workgroup reports; discuss and possibly act on meeting frequency; hear public comment; schedule next meeting; adjourn.

Person with disabilities who plan to attend this meeting and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to call Karla Cantu at 512/424-6682 at least two days prior to the meeting so that the appropriate arrangements may be made.

Contact: Glenn Neal, 4900 North Lamar, Room 1430, Austin, Texas 78751, 512/424-6681.
Filed: October 7, 1998, 3:26 p.m.

TRD-9815672



Texas Department of Licensing and Regulation

Monday, October 19, 1998, 10:30 a.m.

E.O. Thompson Building, 920 Colorado, 4th Floor Conference Room
Austin

Architectural Barriers Advisory Committee

AGENDA:

I. Call to order

II. Record of Attendance

III. Approval of Minutes of meeting held June 22, 1998

IV. Staff Reports

A. Administration

B. Reviews and Variances

C. Inspections and Complaints

D. Enforcement

V. Old Business

A. Statute Clean-up Language

B. Enforcement of Fuel Dispenser Reach Range Status

C. Church Lawsuit Status

D. Theater Seating Status

E. Architectural Barriers Advisory Committee Procedures

VI. New Business

A. Re-write of Standards

VII. Public Comment

VIII. Schedule Next Meeting

IX. Adjournment

Person who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at 512/463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Ferrie, 920 Colorado, Austin, Texas 78711, 512/463-2907.

Filed: October 9, 1998, 11:30 a.m.

TRD-9815865



Friday, November 6, 1998, 9:30 a.m.

E.O. Thompson State Office Building, 920 Colorado, 4th Floor Conference Room

Austin

Task Force on Controls and Safety Devices for Automatically Fired Boilers

AGENDA:

1. Call to order

2. Roll call

3. Approval of agenda

4. Approval of Minutes of March 6, 1998

5. Discussion

6. Next Meeting

7. Adjournment

Person who plan to attend this meeting and require ADA assistance are requested to contact Caroline Jackson at 512/463-7348 two working days prior to the meeting so that appropriate arrangements can be made.

Contact: George Bynog, 920 Colorado, Austin, Texas 78711, 512/463-7365.

Filed: October 9, 1998, 11:40 a.m.

TRD-9815866



Texas Medical Liability Insurance Underwriting Association

Wednesday, October 28, 1998, 1:00 p.m.

Embassy Suites Hotel, 5901 North IH-35

Austin

Board of Directors

AGENDA:

1. Consideration of and possible action and decision of the appeal by the Estate of David K. Selby from the decision of the JUA service company, trail attorneys and General Manager denying the Estate's request for policy coverage and trail defense of pedicle screw litigation related to Dr. Selby.

2. Adjournment

Contact: Joe Chilton, 505 East Huntland Drive, Suite Austin, Texas 78752, 512/452-4370.

Filed: October 8, 1998, 11:21 a.m.

TRD-9815765



Wednesday, October 28, 1998, 1:00 p.m.

Embassy Suites Hotel, 5901 North IH-35

Austin

Board of Directors

REVISED AGENDA:

1. Consideration of and possible action and decision of the appeal by the Estate of David K. Selby from the decision of the JUA service company, trail attorneys and General Manager denying the Estate's request for policy coverage and trail defense of pedicle screw litigation related to Dr. Selby.

Executive Session to consult with attorneys concerning pending or contemplated litigation.

2. Adjournment

Contact: Joe Chilton, 505 East Huntland Drive, Suite Austin, Texas 78752, 512/452-4370.

Filed: October 9, 1998, 8:48 a.m.

TRD-9815847



Texas Mohair Producers Board

Wednesday, October 7, 1998, 7:00 p.m.

Texas Sheep and Goat Raiser Association, 233 West Twohig

San Angelo

EMERGENCY MEETING AGENDA:

Meeting by telephone conference, in accordance with the Texas Government Code Annotated, Section 551.125, to discuss and take action on upcoming biennial election.

Reason for emergency: Reasonably unforeseen circumstances due to ill health of administrative staff and drought-related problems for board members require the emergency meeting of a quorum of the Board by telephone conference to formally approve the details for the biennial election scheduled for November of 1998. Immediate action is required to meet legal deadlines for conduct of the election and to prevent the incurring of financial loss by the Board for costs already incurred towards the election.

Contact: Zane Williard, 233 West Twohig, San Angelo, Texas 76901, 915/655-3161.

Filed: October 7, 1998, 1:34 p.m.

TRD-9815653



Texas Natural Resource Conservation Commission

Monday, October 19, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress, Suite 1100

Austin

REVISED AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to consider the Executive Director's Preliminary Report and Petition mailed June 19, 1998, concerning assessing administrative penalties against and requiring certain actions of John Dollins for violations of Texas Water Code 26.121, 30 TAC 321.31 and 321.35(a), in Johnson County, Texas.

This matter has been designated as SOAH Docket Number 582-98-1698.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3445.

Filed: October 8, 1998, 9:02 a.m.

TRD-9815692



Wednesday, October 21, 1998, 9:30 a.m.

Building E, Room 201S, 12100 Park 35 Circle

Austin

AGENDA:

The Commission will consider the following items on the attached agenda: Hearing Requests; District Matters; Resolution; Industrial Waste Discharge Enforcement Agreed Orders; Edwards Aquifer Enforcement Agreed Orders; Public Water Supply Enforcement Agreed Order; Municipal Waste Discharge Enforcement Agreed Order; Air Enforcement Agreed Orders; Irrigators Enforcement Agreed Order; Municipal Solid Waste Enforcement Default Order; Petroleum Storage Tank Enforcement Agreed Orders; Agricultural enforcement Agreed Order; Agricultural Enforcement Default Order; Municipal Waste Discharge Authorizations to Construct; Executive Sessions. (Registration for the 9:30 a.m. agenda starts at 8:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 8, 1998, 11:22 a.m.
TRD-9815769

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Wednesday, October 21, 1998, 9:30 a.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the attached agenda: old business agenda.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 12, 1998, 11:50 a.m.

TRD-9815944

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Wednesday, October 21, 1998, 1:00 p.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Motion for Reconsideration; Proposals for Decisions. (Registration for the 1:00 p.m. will start at 12:30 until 12:55 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 8, 1998, 11:22 a.m.

TRD-9815771

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Wednesday, October 21, 1998, 9:30 a.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Proposal for Decision and Proposed Order concerning Texas Low-Level Radioactive Waste Disposal; Executive Sessions. (Registration for the 1:00 p.m. will start at 12:30 until 12:55 p.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 8, 1998, 2:02 p.m.

TRD-9815779

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Friday, October 23, 1998, 9:30 a.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

AGENDA:

The Commission will consider approving the following matters on the attached agenda: Sludge Implement Plan; Rules, Executive Session. (Registration for 9:30 a.m. Agenda Starts at 8:30 a.m.)

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 8, 1998, 11:22 a.m.

TRD-9815770

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Friday, October 23, 1998, 9:30 a.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

REVISED AGENDA:

The Commission will consider approving the following items on the attached addendum to agenda: Rule.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 13, 1998, 11:48 a.m.

TRD-9815992

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Friday, October 23, 1998, 9:30 a.m.
Building E, Room 201S, 12100 Park 35 Circle
Austin

REVISED AGENDA:

The Commission will consider approving the following matters on the attached agenda: old business agenda.

Contact: Doug Kitts, 12100 Park 35 Circle, Austin, Texas 78753, 512/239-3317.
Filed: October 9, 1998, 1:28 p.m.

TRD-9815879

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Tuesday, October 27, 1998, 9:30 a.m.
12100 Park 35, Building A, Room 202-Second Floor
Austin

AGENDA:

Meeting called to order; resolution adopted Commission; sites and dates of next examination will be announced; council will elect and chairman and a vice chairman; report by TNRCC staff on legislative matters; reports on examinations, legislative, water conservation, requirement of licensee on site at time of water tap, and enforcement update; various items of interest to council members, citizens, or TNRCC staff to be heard; council will adjourn.

Contact: Gene Reagan or Bettye Jean Urban, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6719 or 512/239-6658 or 512/239-6659.
Filed: October 13, 1998, 3:02 p.m.

TRD-9816013

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Tuesday, October 27, 1998, 10:00 a.m.
Stephen F. Austin Building, 1700 North Congress Avenue
Austin

AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing addressing a petition filed with the Texas Natural Resource Conservation Commission requesting authorization for: (1) conversion of Comal County Fresh Water District filed No. 1 (current operating under Texas Water Code Chapter 53) to a Municipal Utility District operating under Texas Water Code, Chapter 54, and (2) a changing name from Comal County Fresh Water District No. 1 into Rebecca Creek Municipal Utility District. Chapter 53 of the Texas Water Code would no longer apply to the converted District.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78711-3025, 512/475-3445.

Filed: October 9, 1998, 11:47 a.m.

TRD-9815875



Thursday, October 29, 1998, 10:00 a.m.

Stephen F. Austin, 1700 North Congress, Suite 1100

Austin

REVISED AGENDA:

An Administrative Law Judge from the State Office of Administrative Hearings will conduct a public hearing to consider a statement a change in water rates by Water Services, Inc., filed with the Texas Natural Resource Conservation Commission effective June 15, 1998, for its service area located in Bexar County, Texas.

This matter has been designated at SOAH Docket No. 582-98-1363.

Contact: Betty Goetz, P.O. Box 13025, Austin, Texas 78753, 512/475-3445.

Filed: October 13, 1998, 10:32 a.m.

TRD-9815989



Friday, November 6, 1998, 9:00 a.m.

12015 Park 35 Circle, Building F, Room 2210

Austin

AGENDA:

Contact: Janice Robinson, 12015 Park 35 Circle, Austin, Texas 78753, 512/239-1139.

Filed: October 7, 1998, 1:38 p.m.

TRD-9815654



Wednesday, December 9, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1792; TNRCC Docket No. 97-0198-ARG-E; Darren Turley doing business as Turley Dairy; The purpose of the hearing will be to consider the Executive Director's amended report and petition mailed July 2, 1998, concerning assessing administrative penalties against and requiring certain actions of

Darren Turley doing business as Turley Dairy for violations in Erath County, Texas of 30 TAC Section 321.35 and Texas Water Code Section 26.12(a).

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:48 a.m.

TRD-9815845



Monday, December 14, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1794; TNRCC Docket No. 98-0110-AIR-E; Oso Cotton Burrs, Inc.; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed July 2, 1998, concerning assessing administrative penalties against a requiring certain actions of Oso Cotton Burrs, Inc. for violations in Nueces County, Texas, of the Texas Clean Air Act, Texas Health and Safety Code, Sections, 382-0895(a) and 382.085(b); and 30 TAC Sections 101.4 and 111.201.

Contact: Blas Coy, P.O. Box 138087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815844



Monday, December 14, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin, 1700 North Congress Avenue

Austin

AGENDA:

SOAH Docket No 585-98-1795; TNRCC Docket No. 97-0411-MWD-E; Sky Property Management, A Co-Partnership; Sky Properties/Su Yen Ltd; Minchange Company, Inc.; Ta-Shen Su; and Amy Hor-Met Su; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed June 17, 1998, concerning assessing administrative penalties against and requiring certain actions of Sky Property Management, A Co-Partnership; Sky Properties/Su Yen Ltd.; Minchang Company, Inc.; Ta-Shen Su; and Army Hor-Met Su for violations in Harris County, Texas Water Code Section 26.121 and TNRCC Permit No. 13709-001.

Contact: Blas Coy, MC-103, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815842



Friday, December 18, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1796; TNRCC Docket No. 97-1076-PST-E; Colonial Full Service Car Wash, Inc.; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed July 14, 1998, concerning assessing administrative penalties against and requiring certain actions of Colonial Full Service Car Wash Inc. for violations in Tarrant County, Texas, of 30 TAC Section 334.504(b)(1)(A).

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815843



Monday, January 4, 1999, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1797; TNRCC Docket No. 98-0055-EAQ-E; Paul Kugle and Zepha Kugle; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed June 29, 1998, concerning assessing administrative penalties against and requiring certain actions of Paul Kugle and Zepha Kugle for violations in Williamson County, Texas of 30 TAC Section 213.4(a).

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815837



Monday, January 4, 1999, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1798; TNRCC Docket No. 98-0398-AGR-E; Aztex Dairy, Inc.; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed July 28, 1998, concerning assessing administrative penalties against and requiring certain actions of Aztex Dairy, Inc. for violations in Erath County, Texas, of the Texas Water Code Section 26.121 and 30 TAC Section 321.35.

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815840



Monday, January 11, 1999, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1799; TNRCC Docket No. 98-0203-OSI-E; Edwin Hempel; The purpose of the hearing will be to consider the Executive Director's first amended report and petition mailed August 11, 1998, concerning assessing administrative penalties against and requiring certain actions of Edwin Hempel for violations in Coryell County, Texas of 30 TAC Sections 285.17(e), 285.103(a)(4), and 285.109 and the Texas Health and Safety Code Sections 366.004, 366.051(a), and 366.051(c).

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815838



Tuesday, January 12, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1800; TNRCC Docket No. 98-0011-PWS-E; Thomas Morris doing business as Morriss Country Meat Market; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed July 16, 1998, concerning assessing administrative penalties against and requiring certain actions of Thomas Morris doing business as Morriss Country Meat Market for violations in Smith County, Texas, of the Texas Health and Safety Section 341.033(d) and 30 TAC Sections 290.46(a), 290.41(c)(3)(A), 290.42(e)(4), 290.106(a)(2), 290.41(c)(3)(O) and 290(c)(1)(A)(ii).

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815839



Friday, January 15, 1998, 10:00 a.m.

Suite 1100 of the Stephen F. Austin Building, 1700 North Congress Avenue

Austin

State Office of Administrative Hearings

AGENDA:

SOAH Docket No. 582-98-1801; TNRCC Docket No. 98-0386-SLG-E; Eddie Elliott; The purpose of the hearing will be to consider the Executive Director's preliminary report and petition mailed July 29, 1998, concerning assessing administrative penalties against and requiring certain actions of Eddie Elliott for violations of Sections 312.142(a), 312.143, 312.144(a), and 312.145(a) and Texas Water Code Section 26.121. Disposal occurred within Liberty County, Texas.

Contact: Blas Coy, P.O. Box 13087, Austin, Texas 78711-3087, 512/239-6363.

Filed: October 9, 1998, 8:47 a.m.

TRD-9815841



The One-Call Board of Texas (Texas Underground Facility Notification Corporation)

Thursday, October 15, 1998, 10:00 a.m.

1400 North Congress Avenue, Capitol Extension, Room E2.022

Austin

Committee-New Member Orientation

AGENDA:

Call to order; review Article 9033; review open meetings and open records provisions; review previous Board action; review implementation process; adjourn.

Contact: Donald M. Ward, P.O. Box 684562, Austin, Texas 78768-4562, 512/477-2255.

Filed: October 8, 1998, 3:10 p.m.

TRD-9815799



Texas State Board of Plumbing Examiners

Thursday, October 22, 1998, 9:00 a.m.

929 East 41st Street

Austin

Enforcement Committee

AGENDA:

October 22, 1998, 9:00-Call to order roll call.

Consideration of Minutes of September 30, 1998 Enforcement Committee Meetings for Adoption as Recorded,

Review of Citation List and possible action.

Informal Conference Discussion and possible action on the following case with all individuals involved who have been asked to appear-Case #98000531-Time 9:30 a.m.

Review of Applicants with Past Criminal Convictions and possible action.

Complaint Cases for Review

The following cases will be reviewed by and possibly acted upon the Committee as time allows. Time may not allow for all cases listed to be reviewed:

Case #'s 9602731 and 98000510

Contact: Robert L. Maxwell, 929 East 41 Street, Austin, Texas 78751, 512/458-2145, Ext. 233.

Filed: October 13, 1998, 1:17 p.m.

TRD-9816000



Texas Department of Protective and Regulatory Services

Friday, October 23, 1998, 9:00 a.m.

701 West 51st Street, John H. Winters Buildings, Public Hearing Room 125-E

Austin

Board of Protective and Regulatory Services

AGENDA:

1. Call to Order. 2. Reading, correction and approval of the minutes of August 28, 1998. *3. Historical look at Child Protective Services data. 4. Public Testimony. 5. Report by Chairman-Recognition of Community Partners . 6. Report by Executive Director. 7. 1998 Report from Statewide Preparation for Adult Living Youth Leadership Committee. 8. Update on Strategic Initiatives. a Performance Measure Improvement; b. Management Information; c. Competitive Procurement (Project PACS); d. Project Renew; e. Permanency Planning. 9. Presentation of the Texas Adoption Resource Exchange. 10. Staff Reports: a. Automation Report. b. Finance report. c. Update on allowing providers to access Medicaid for therapy. 11. New Business: a. Consideration and approval of daily level-of-care reimbursement amounts for twenty-four hour residential care facilities for State Fiscal Year 1999.* b. Consideration and approval to publish for public comment new rules governing behavior intervention in residential child care facilities.* c. Consideration and approval to public for public comment amendments to rules concerning the disqualification from re-examination for institutional administrators licensing.* d. Consideration and approval to publish for public comment the repeal of existing rules and adoption of proposed rules regarding the Services to At-Risk Youth Program.* e. Consideration and approval to publish to public comment an amendment to rules in Child Protective Services relating to the investigation standards of proof. * *Denotes Action Item

Contact: Virginia Guzman, P.O. Box 149030, Mail Code E-554, Austin, Texas 78714-9030.

Filed: October 14, 1998, 11:54 a.m.

TRD-9816093



Texas State Board of Examiners of Psychologists

Friday, October 30, 1998, 8:30 a.m.

333 Guadalupe, Suite 2-400A

Austin

Psychological Associate Advisory Committee

AGENDA:

The Psychological Associate Advisory Committee to the Texas State Board of Examiners of Psychologists (Board) will meet to consider public comments, minutes of the August 1998 meeting; rules; reports from the Chair of the Committee, the Executive Director of the Agency, the General Counsel of the Agency and a report on the September 1998 meeting of the Board; reports from the following sub-committees; Disciplinary Sanctions, Financial Advisory, Legislative, Policies and Procedures, Professional/Ethical Standards and Development, Publications, and Research, and Supervisory Guidelines. The Committee will also review Rule 461.31 proposed by the Board, plan for future Advisory Committee meetings and hold an executive session to seek legal advice.

Contact: Sherry L. Lee, 333 Guadalupe, Suite 2-450, Austin, Texas 78701, 512/305-7700.

Filed: October 13, 1998, 3:24 p.m.

TRD-9816015



Texas Public Finance Authority

Friday, October 16, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.
2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series, 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.
3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 8, 1998, 9:02 a.m.

TRD-9815691



Monday, October 19, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.
2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series, 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.
3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 9, 1998, 12:02 p.m.

TRD-9815876



Tuesday, October 20, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.

2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series, 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.

3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 12, 1998, 8:58 a.m.

TRD-9815925



Wednesday, October 21, 1998, 10:30 a.m.

William P. Clements Building, 300 West 15th Street

Austin

Board Meeting

AGENDA:

1. Call to order.
2. Approval of minutes of the August 12, 1998 Board meeting.
3. Consider a request for financing from the State Preservation board for the issuance of revenue bonds in the amount of approximately \$40 million for the second phase of the State History Museum project, and select a methods of sale.
4. Consider a request for financing for financing from the Texas Youth Commission for the issuance of general obligation commercial paper notes in the amount of approximately \$6,800,000.
5. Discuss matters relating to the application of the Open Meetings Law to Board Pricing Committees.
6. Consider and adopt a master resolution establishing a revenue financing system for Texas Southern University; authorizing the sale of refunding and improvement bonds (Series 1998A) for Texas Southern University; and supplemental resolutions authorizing the sale of revenue bonds for the University's recreation facility project (Series 1998B) and a health facility project (Series 1998C), execution of documents in connection therewith, and resolving related matters.
7. Report on pricing and sale of General Obligation Refunding Board, Series A and Series B and General Obligation Park Development Refunding Bonds (Texas Parks and Wildlife Department Project), Series 1998C, approve the terms of the sale of one or more Series of the Bonds, and authorize the execution of a Bond Purchase Contract with respect thereto Program.
8. Consider change of liquidity providers for the Texas Public Finance Authority's General Obligation Commercial Paper Program.
9. Report of Midwestern State University and Stephen F. Austin University pricings.
10. Other Business
11. Adjourn.

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron

or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 13, 1998, 2:12 p.m.

TRD-9816005



Thursday, October 22, 1998, 9:00 a.m.

First Southwest Company, 1700 Pacific Avenue, Suite 500

Dallas

TPFA Board Pricing Committee Meeting

AGENDA:

1. Call to order.
2. Consider and act upon the pricing and sale of the State of Texas General Obligation Refunding Bonds, Series, 1998A, Series 1998B, and/or 1998C, including establishing the terms of said bonds, approving a bond purchase contract, and approving or authorizing other action relating thereto.
3. Adjourn

Persons with disabilities, who have special communication or other needs, who are planning to attend the meeting should Jeanine Barron or Marce Watkins at 512/463-5544. Requests should be made as far in advance as possible.

Contact: Jeanine Barron, 300 West 15th Street, Suite 411, Austin, Texas 78701, 512/463-5544.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816065



Public Utility Commission of Texas

Tuesday, October 20, 1998, 9:00 a.m.

William B. Travis Building, 1701 North Congress Avenue, 7th Floor, Robert W. Gee, Hearing Room

Austin

Synchronous Interconnection Committee

AGENDA:

Project Number 14894: A meeting of the Synchronous Interconnection Committee (SIC) will be held to investigate the most economical, reliable, and efficient means to synchronously interconnect the alternating current electric facilities of electric utilities within the Electric Reliability Council of Texas reliability area to the alternating current electric facilities of electric utilities within the Southwest Power Pool reliability area, including the cost and benefit to effect the interconnection, and estimate of the time to construct the interconnecting facilities, and the service territory of the utilities in which those facilities will be locate. The SIC will plans to give final approval to its report.

Contact: Bret Slocum, 1701 North Congress Avenue, Austin, Texas 78701, 512/936-7265.

Filed: October 9, 1998, 10:26 a.m.

TRD-9815856



Railroad Commission of Texas

Wednesday, October 21, 1998, 9:15 a.m.

1701 North Congress, 12th Floor, Conference room 12-170

Austin

AGENDA:

The Commission will hold its monthly statewide hearing on oil and gas to determine the lawful market demand for oil and gas and to consider and/or take action on matters listed on the agenda posted with Secretary of State's Office.

Contact: Katy Way, P.O. Box 12967, Austin, Texas 78711, 512/463-6729.

Filed: October 9, 1998, 4:11 p.m.

TRD-9815909



Wednesday, October 21, 1998, 9:20 a.m.

1701 North Congress, 12th Floor, Conference Room 12-170

Austin

AGENDA:

According to the complete agenda, the Railroad Commission of Texas will consider various applications and other matters within the jurisdiction of the agency including oral arguments at the time specified on the attached agenda. The Railroad Commission of Texas may consider the procedural status of any contested case if 60 days or more have elapsed from the date the hearing was closed or from the date the transcript was received.

The Commission may meet in Executive Session on nay items listed above as authorized by the Open Meeting Act.

Contact: Lindil C. Fowler, Jr., P.O. Box 12967, Austin, Texas 78711, 512/463-7033.

Filed: October 9, 1998, 4:12 p.m.

TRD-9815910



Wednesday, October 21, 1998, 11:00 a.m.

1701 North Congress, 12th Floor, Conference room 12-170

Austin

AGENDA:

The Railroad Commission of Texas will conduct an oral argument on Docket No. 04-0217266, the application of Exxon Corporation. For a new field designation and two-factor allocation formula for the proposed KRB/ZUNI-NC (VXBG) Field, Kleberg County, Texas.

Contact: Colin K. Lineberry, P.O. Box 12967, Austin, Texas 78711, 512/463-6724.

Filed: October 9, 1998, 4:11 p.m.

TRD-9815908



Texas Rehabilitation Commission

Thursday, October 29, 1998, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar Boulevard

Austin

Texas Rehabilitation Advisory Council

AGENDA:

Roll call/agenda review/announcements/approval of June 1998 meeting minutes/chairperson's report/staff report/break/liaison member updates/discussion: 1998 TRAC Annual Report/lunch.

Public comment/council review: Rehabilitation Act Amendments of 1998; TRAC Operating Procedures; TRAC Subcommittees/break/council review, cont./recess.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-410.

Filed: October 14, 1998, 10:01 a.m.

TRD-9816078



Friday, October 30, 1998, 9:00 a.m.

Brown Heatly Building, 4900 North Lamar Boulevard

Austin

Texas Rehabilitation Advisory Council

AGENDA:

Commissioner's update/council discussion: wrap-up review from Thursday; Sunset Commission Report on TRC/break/resume council discussion/lunch

recommendations/action items/agenda items for next meeting/ad-journ.

Contact: Barbara Ritter, 4900 North Lamar Boulevard, Austin, Texas 78751, 512/424-410.

Filed: October 14, 1998, 10:02 a.m.

TRD-9816079



Texas Savings and Loan Department

Friday, November 6, 1998, 9:00 a.m.

Finance commission Building, 2601 North Lamar, Third Floor

Austin

AGENDA:

The purpose of this meeting (hearing) is to accumulate a record of evidence in regard to the application from Community Bank and Trust, SSB, Beaumont, Texas, to operate a branch office to be located at 1105 South Pine Street, Kountze, Hardin County, Texas after completing its conversion to a state savings bank, from which record the Commissioner will determine whether to grant or deny the application.

Contact: William Clark Johnson, 2601 North Lamar Boulevard, Suite 201, Austin, Texas 78705, 512/475-1350.

Filed: October 8, 1998, 4:12 p.m.

TRD-9815806



School Land Board

Tuesday, October 20, 1998, 10:00 a.m.

Stephen F. Austin Building, 1700 North Congress Avenue, Room 831

Austin

Board

AGENDA:

Approval of previous board meeting minutes; Closed Session and Open Session-consideration and approval of terms and conditions for tracts offered at the sealed bid land sale of October 20, 1998, including but not limited to .81 acres, Travis County, Texas; Open Session-opening and consideration of bids revised for the October 20, 1998 sealed bid land sale; Closed Session-discussion of bids received for the October 20, 1998 sealed bid land sale; pooling applications, Giddings (Austin Chalk-3), Fayette Co.; Brookeland (Austin Chalk 8800), Jasper Co.; Wildcat Field, Haskell Co.; applications to lease highway rights of way for oil and gas, Co. Road 1948, Washington Co.; St. Hwy 281, Live Oak Co.; St. Hwy 176, Martin Co.; St. Hwy. 111, Jackson Co.; City Streets, Hearne, Texas Robertson Co.; consideration of schedule and procedures, including modification of lease provisions relating to lease term, applicable royalty rate, and related issues for the April 6, 1998 oil, gas and other minerals lease sale; report from staff regarding the conclusion of the review and reconsideration of General Land Office administrative rules, 31 TAC Chapter 10, and request for authorization to publish in the Texas Register the conclusion from the review and reconsideration that the reasons for adopting those rules continues to exist; coastal public lands-commercial easement application, Keller Creek, Calhoun Co.; easement applications and renewals, Carancahua Bay, Calhoun Co.; Hynes Bay, Calhoun Co.; Trinity Bay, Chambers Co.; structure (cabin) permit renewals, terminations and requests, Laguna Madre, Kenedy Co.; Laguna Madre Willacy Co.; Laguna Madre, Kleberg Co.; Espiritu Santo Bay, Calhoun Co.; Project report and briefing regarding the General Land Office Lease Management system (ELMS), Closed and Open Sessions-consideration and approval of acquiring a tract of land in Nueces County, Texas in conjunction with a land trade; Closed and Open Sessions consideration and approval of a 20 year commercial lease with option to purchase, 0.6456 acres, El Paso.; Closed and Open Sessions-update on Paseo Del Este, El Paso County, Closed and Open Session-status report on State of Texas et al v. Amoco Production Company, et al, Cause #95-08680, 345th Judicial district Court , Travis Co., Texas; Closed and Open Session-Closed and Open Session-pending or contemplated litigation; and/or settlement offers.

Contact: Linda L. Fisher, Stephen F. Austin Building, 1700 North Congress, Room 836, Austin, Texas 78701, 512/463-5016.

Filed: October 12, 1998, 4:50 p.m.

TRD-9815981



State Securities Board

Wednesday, October 21, 1998, 9:30 a.m.

Rusk State Office Building, 208 East 10th Street, Room 227

Austin

Board

AGENDA:

(1) July 22, 1998, Meeting Minutes. (2) Possible executive session under Government Code, §551.071(1)(A) and possible decision by Board on whether to consider motion for rehearing regarding the Pohl, Brown and Associates, Inc., Order. (3) Rules: (A) Published rule proposals relating to (1) amending §§105.2, 105.5-105.8, 105.12-105.14, and 105.16-105.19; (2) repealing §§105.3 and 105.9-105.11; (3) creating new §105.9, concerning filings in contested case; (4) amending §§113.1, 113.3-113.6, 113.8, 113.9 and 113.11-113.13; (5)

creating new §§113.14-113.25, concerning the following securities registration matters: corporate securities definitions; impoundment of proceeds; loans and other material affiliated transactions; options and warrants; preferred stock promoter's equity investment; promotional share; specificity in use of proceeds; underwriting expenses, underwriter's warrants, selling expenses, and selling security holders, un-sound financial condition; unequal voting rights; and debt securities; (6) amending §115.1; (7) amending §115.3; (8) amending §139.19; (B) New rule proposals relating to: (1) amending §109.13(k)(16); (2) amending §115.1(h); (3) amending §101.1 and §101.2; (4) amending §101.3; (5) amending §101.5; (6) amending §103.5; (7) amending §§104.2 and 104.4-104.5; (8) amending §104.6; (C) Rule Review and Readoption: (1) Chapter 101; (2) Chapter 103; (3) Chapter 104. (4) Response to Recommendations of the 1998 Management Control Audit. (5) New business items for future board meetings. (6) Update on Agency operations from Securities Commissioner and Senior Staff.

Contact: Denise Voigt Crawford, 208 East 10th Street, Fifth Floor, Austin, Texas 78701, 512/305-8300.

Filed: October 13, 1998, 4:54 p.m.

TRD-9816031

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Sheep and Goat Predator Management Board

Friday, October 23, 1998, 10:30 a.m.

Texas Sheep and Goat Raisers Association Building, 233 West Twohig

San Angelo

AGENDA:

Opening Remarks and Welcome

Review and approval on minutes of last meeting-August 18, 1998; Review and approval of Fiscal Affairs

Report of Officers and Directors: Discussion and Action: New Business: Review of telephone messages-Report from Katie Stavinoha, TDA; Annual Report/Hot-Spot Renewal Requests; Additional to Hot Spots Requests; Special Requests; Scheduling of next meeting. Un-finished Business: Coping with Bobcats video and Predators in the Classroom reports; Texas Animal Health Audit; Biennial election progress; Report from Gary Nunley-Animal Damage Control.

Discussion: Other Business

Adjourn

Contact: Minnie Savage, 233 West Twohig, San Angelo, Texas 76903-3543, 915/659-8777.

Filed: October 13, 1998, 2:37 p.m.

TRD-9816009

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Stephen F. Austin State University

Monday, October 19, 1998, 11:30 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents, Finance Committee

AGENDA:

I. D&O Insurance

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 13, 1998, 4:23 p.m.

TRD-9816026

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Monday, October 19, 1998, 1:00 p.m.

1936 North Street, University Center President's Suite

Nacogdoches

Board of Regents, Building and Grounds Cte.

AGENDA:

I. Architectural and Engineering Services

II. Building Fire Sprinkler Systems

III. Coliseum Air Handlers

IV. Vehicle Replacements

V. University Center ADA Project

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 13, 1998, 4:23 p.m.

TRD-9816027

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Monday, October 19, 1998, 1:30 p.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Open Session-Committee of the Whole

II. Executive Session

A. Review of Pending Litigation (551.071)

1. Ginn v. SFA, et al

2. Weber v. NAH, Inc. et al

3. Trahan v. SFA

4. Fowler v. SFA

5. Dudley v. SFA

6. Hoover, et al v. Morales, et al

7. Allred v. SFA

B. Legal Advice Regarding Patent Matter (551.071)

III. Open Discussion of Tuesday Board

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 13, 1998, 4:23 p.m.

TRD-9816028

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Monday, October 19, 1998, 3:30 p.m.

1936 North Street, Austin Building, Room 305
Nacogdoches
Board of Regents, Ad Hoc Cte. on Recognitions

AGENDA:

I. Consideration of special recognition: honorary degree, special recognition day, naming facilities

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 13, 1998, 4:23 p.m.

TRD-9816029



Tuesday, October 20, 1998, 9:00 a.m.

1936 North Street, Austin Building, Room 307

Nacogdoches

Board of Regents

AGENDA:

I. Executive Session

A. Report on Pending Litigation

1. Pending lawsuits

2. Legal advice on patent matter

(Possible action may be taken in Open Session on matters considered in Executive Session.)

II. Approval of July 21 and September 18, 1998, Minutes

III. Personnel

A. Faculty and Staff Appointments for 1998-1999

B. Change of Status

C. Leave of Absence

IV. Academic and Student Affairs

A. Underrolled Class Report for Fall 1998

B. Curriculum

C. Core Curriculum Proposal

D. SFA 03 Draft

E. Consideration of Honorary Degree

F. Consideration of Special Named Day

V. Financial Affairs

A. Directors and Officers Liability Insurance

B. Architectural and Engineering Services

C. Replacement of Physical Plant Vehicles

D. Budget Changes Less Than \$50,000

VI. Buildings and Grounds

A. Building Fire Sprinkler Systems

B. Replacement of Coliseum Air Handlers

C. Renovation of Room 133 McGee Building

D. Renovation of Tucker House Garage

E. Refinish Floors in HPE Complex

F. University Center ADA Project

G. Naming of the SFA Track

H. Naming of the SFA Agriculture Farm

I. Naming of the SFA Music Building

J. Music Building Instructional Equipment and Classroom Furnishings

VII. University Policies and Procedures

A. Policy Revisions

VIII. Reports

A. Chair Faculty Senate

B. President, Student

C. Vice President-Alumni Affairs

D. Vice President for University Advancement

E. President

(Where appropriate, and permitted by law, Executive Sessions may be held for the above listed subjects.)

Contact: Dan Angel, P.O. Box 6078, Nacogdoches, Texas 75962-6078, 409/468-2201.

Filed: October 13, 1998, 4:24 p.m.

TRD-9816030



Texas State Technical College System

Monday, October 19, 1998, 3:30 p.m.

3801 Campus Drive, Chancellor's Office Building, Conference Room
Waco

Board of Regents Executive Committee

AGENDA:

The Board of Regents Executive Committee will meet by telephone conference to take action on Administrative Computer Acquisition.

Contact: Sandra J. Krumnow, 3801 Campus Drive, Waco, Texas 76705, 254/867-3964.

Filed: October 13, 1998, 3:41 p.m.

TRD-9816018



Texas A&M University System, Board of Regents

Monday, October 12, 1998, 10:30 a.m.

2121 West Holcombe Boulevard, Room 1119, Institute of Biosciences and Technology (IBT)

Houston

Committee on Audit

AGENDA:

The purpose of the meeting is to discuss The Texas A&M University System's internal audit structure and those of other similar institutions of higher education.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: October 7, 1998, 3:26 p.m.

TRD-9815674



Monday, October 12, 1998, 2:00 p.m.

2121 West Holcombe Boulevard, Room 1119, Institute of Biosciences and Technology (IBT)

Houston

Ad Hoc Evaluation Criteria Committee

AGENDA:

The purpose of the meeting is to continue the Committee's work in developing criteria for evaluating System expansion opportunities and take any action the Committee deems necessary and appropriate.

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: October 7, 1998, 3:26 p.m.

TRD-9815673



Saturday, October 17, 1998, 11:35 a.m.

Board of Regents Meeting Room, MSC Annex, Clark Street, Texas A&M University

College Station

Board of Regents

AGENDA:

The purpose of the meeting is to receive reports and discuss personnel matters concerning the Deputy Chancellor for Finance and Operations of The Texas A&M University System. (These matters will be discuss in closed session).

Contact: Vickie Burt, Texas A&M University System, College Station, Texas 77843, 409/845-9600.

Filed: October 14, 1998, 11:31 a.m.

TRD-9816090



Texas Title Insurance Guaranty Association

Tuesday, October 20, 1998, 10:00 a.m.

Texas Department of Insurance, 333 Guadalupe, Commissioners Conference Room 370A, 3rd Floor, Hobby I

Austin

Board of Directors

REVISED AGENDA:

I. Call Meeting to Order

II. Approval of Minutes of July 14, 1998 Board of Directors Meeting

III. Financial Report-Marvin Coffman

IV. Title Examiner's Report-Ethel Benedict

V. Conservator's Report: Gene Jarmon

VI. Counsel's Report-Burnie Burner

VII. Discussion and Possible Action Regarding the Return of Assessment Fund Received for the Title USA Estate and Final Report to Commissioner

VIII. Discussion and Possible Action Regarding Loans Receivable from Title USA Estate

IX. Discussion and Possible Action Regarding the Listing or Sale of Association Real Property

X. Discussion and Possible Action Regarding Recommendations to the Commissioner Addressing Home Equity Lending

XI. Discussion and Possible Action Regarding Payment of Expenses for Participants Involved in the Home Equity Lending Commission's Hearing

XII. Discussion of Director Vacancies

X. Set Date and Time for Next Meeting (January 12, 1998)

XI. Adjourn

Contact: Burnie Burner, 333 Guadalupe, Room 370A, Austin, Texas 78701, 512/474-1587.

Filed: October 13, 1998, 4:58 p.m.

TRD-9816032



University of Houston

Monday, October 19, 1998, 1:00 p.m.

S&R11, Room 501, University of Houston, 4800 Calhoun Boulevard Houston

Institutional Animal Care and Use Committee

AGENDA:

To discuss and/or act upon the following:

Approval of September 21, 1998 Minutes

New Protocols

Renewal Protocols

Other Business

Contact: Charles Rafllo, 4800 Calhoun Boulevard, Houston, Texas 77204-5510, 713/743-9191.

Filed: October 12, 1998, 2:40 p.m.

TRD-9815963



University of Houston System

Wednesday, October 21, 1998, 8:00 a.m.

Athletics/Alumni Center, 3100 Cullen Boulevard, Melcher Board Room

Houston

Board Meeting

AGENDA:

I. Board Meeting-A) Call to Order; B) Executive Session; C) Report and Action from Executive Session; D) Open Forum; E) Approval of Minutes; F) Chancellor's Report; G) Report from Executive Committee; H) Recess for Committee Meetings

II. Academic and Student Affairs Committee-A) Call to Order; B) Items Forwarded from the September 21, 1998 Committee Meeting for Approval: 1. Bachelor of Science in Computer Engineering; 2. Bachelor of Science in Engineering Technology (BSET) Degree with Option in Safety and Fire; 3. Creation of Department of Criminal Justice; 4. Report on Contracts and Grants-October 1998; C) Adjourn; D) Board Approval of Academic/Student Affairs Committee Report

III. Institutional Advancement and External Affairs Committee-A) Call to Order; B) Report from September 21, 1998 Committee Meeting; C) Adjourn

IV. Administration and Finance Committee-A) Call to Order; B) Items Forwarded from the September 21, 1998 Committee Meeting for Board Approval: 1. Acquisition of Administrative Computer Systems; 2. Consolidated Revenue Bonds, Series 1999: Bond Resolution, Preliminary Official Statement and Official Notice of Sale; 3. Withdrawal from the KUHT Quasi Endowment; 4. Withdrawal from the KUHT Capital Improvements Quasi Endowment; 5. Withdrawal from the John and Rebecca Moores System Endowment; 6. Award of a Construction Contract for the LeRoy and Lucile Melcher Center of Public Broadcasting; 7. Annual Write-off Accounts and Notice Receivable, FY 98; 8. Revision of Board Policies 43-47; 9. Personnel Recommendations for Executive Management Employees-October 1998; 10. Purchase Order with National Public Radio; 11. Architectural Schematic Design and Project Planning Guide for the New Police Building; 12. Architectural Schematic Design and Project Planning Guide for the Fine Arts Renovation; 13. Award of a Construction Contract with Mechanical Services of Houston for the FY 99 Capital Renewal/Deferred Maintenance HVAC/Plumbing Project; 14. Replacement of the Athletic Flooring in the Field House and Weight Room of the Athletics/Alumni Center; 15. Construction of a Nine-lane Olympic Track and Field Complex; 16. Architectural Schematic Design and Project Planning Guide for the One Main Building Third Floor Renovation; 17. Abatement of Lead Paint on Decks at the One Main Building; 18. Restoration of Decks at the One Main Building; 19. Project Planning Guide for Initial Facility/Academic Building at Fort Bend; 20. Interlocal Cooperation Act Contract with the Victoria College for FY 1998-1999; C) New Item(s) Presented for Committee Consideration and Board Approval: 1. Acquisition of Two Tracts of Land on Ben Wilson Street with One Track Having an 8,000 Square Foot Building; 2. Consultant Agreement for Cold Beverage Pouring rights; 3. Food Service Equipment Replacement and Location Renovations (Chartwells); 4. External Pharmacy Doctorate Fees; 5. Award a Construction contract with Jonmar Electric, Inc. for the FY99 Capital Renewal/Deferred Maintenance Electrical Project; D) Adjourn; E) Board Approval of Administration and Finance Committee Report

V. Reconvene Board of Regents Meetings

VI. Adjourn

Contact: Peggy Cervenka, 3100 Cullen, Suite 205, Houston, Texas 77204-6732, 713/743-3444.

Filed: October 14, 1998, 9:09 a.m.

TRD-9816064



Texas Water Development Board

Thursday, October 15, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

Board

AGENDA:

The Board will consider: minutes; committee, executive and financial reports; briefing on El Paso water issues; financial assistance to Moore Water Supply Corporation, City of Corsicana, Jasper County Water Control and Improvement District No. 1, Brookeland Fresh Water Supply District, Kirkmont Municipal Utility District and Possum Kingdom Water Supply Corporation; request from Prosper to amend Board Resolution No. 97-59 regarding the revenue pledge supporting Town of Prosper Combination Tax and Revenue Certification of Obligation, proposed series 1998; affirmation of environmental finding and release of funds for design and construction to San Antonio Water systems; authorizing the Executive Administrator and Director of Debt Management to solicit proposals for an underwriting team for future board negotiated bond issues/transactions; request to amend Board Resolution No. 96-99 regarding the revenue pledge supporting the \$6,625,000 City of Lampasas, Texas Combination Tax and Revenue Certificates of Obligation, proposed series 1996; resolution to amend Rayburn Country Municipal Utility District bonds to change the call date; authorizing a contract amendments with Eagle Pass for flood protection planning and transfer of funds; amendments to 31 TAC §357.7 regarding information in regional water plans and 31 TAC Chapter 367 regarding grants for purchase of agricultural water conservation equipment; publication on proposed amendments to 31 TAC §355.93 and §355.99 concerning a change in funding limits for regional water planning; publication of proposed amendments to 31 TAC Chapter 371 regarding project ratings, distribution of funds and development of intended use plan; publication of amendments to 31 TAC Chapter 363 regarding administrative cost recovery for the Clean Water State Revolving Fund program; and eligible costs for funding regional water plan development, approval of the method to distribute available funds, discussion of contract terms, and legislative appropriation estimates.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: October 7, 1998, 3:19 p.m.

TRD-9815664



Thursday, October 15, 1998, 1:30 p.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

Board

AGENDA:

Members of the Texas Water Development Board will meet with chairs of the 16 Regional Water Planning Groups to discuss issues relating to regional water planning.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: October 7, 1998, 3:19 p.m.

TRD-9815663



Texas Water Resources Finance Authority

Thursday, October 15, 1998, 9:00 a.m.

Stephen F. Austin Building, Room 118, 1700 North Congress

Austin

AGENDA:

1. Consider approval of the minutes of the meeting of September 17, 1998.

2. Consider authorizing the Executive Administrator and Directors of Debt Management to solicit proposals for an underwriting team for future Authority negotiated bond issues and transactions.

Contact: Craig D. Pedersen, P.O. Box 13231, Austin, Texas 78711, 512/463-7847.

Filed: October 7, 1998, 3:19 p.m.

TRD-9815662



Texas Workers' Compensation Commission

Friday, October 16, 1998, 9:30 a.m.

4000 South IH-35, Room 910-911, Southfield Building

Austin

Medical Advisory Committee

AGENDA:

1. Call to order
2. Review and possible approval of the August 28, 1998 minutes
3. Items from Division Director
4. Update on Proposed Utilization Review Rule
5. Report on AMA Guide Clarification
6. Report on Spine Treatment Guideline
7. Action Items
8. Announcement of Guidelines Standardization Meeting Immediately following the MAC meeting
9. Establish the next meeting date
10. Adjournment

Contact: Linda McKee, 4000 South IH-35, Austin, Texas 78704, 512/440-5690.

Filed: October 7, 1998, 4:35 p.m.

TRD-9815681



Texas Workers' Compensation Insurance Fund

Thursday, October 15, 1998, 8:00 p.m.

County Line Barbecue, FM 2641 1/2 mile West of US 87, Take the Regis Exit

Lubbock

Board of Directors

AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund ("Fund") will have an informal dinner at 8:00 p.m. on Thursday, October 15, 1998. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund, and certain staff of

the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: October 7, 1998, 3:26 p.m.

TRD-9815683



Friday, October 16, 1998, 7:00 p.m.

4607 92nd Street

Lubbock

Board of Directors

AGENDA:

The Board of Directors of the Texas Workers' Compensation Insurance Fund ("Fund") will have an informal dinner at 7:00 p.m. on Friday, October 16, 1998. The dinner is intended to be a social event, and there is no formal agenda. No formal action will be taken, but it is possible that discussions could occur which could be construed to be "deliberations" within the meaning of the Open Meetings Act; therefore, the dinner will be treated as an "open meeting" and the public will be allowed to observe. However, dinner will be provided only for the Board of Directors of the Fund, and certain staff of the Fund. No dinner or refreshments will be provided for members of the public who may wish to attend.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: October 8, 1998, 2:02 p.m.

TRD-9815782



Friday-Saturday, October 16-17, 1998, 9:45 a.m.

2551 South Loop 289, The Renaissance room and 5225 South Loop 289, Suite 220

Lubbock

Board of Directors

AGENDA:

Call to Order; Roll call; Review and Approval of the Minutes of the August 26, 1998, Board Meeting Action Items; Consideration of Discretionary Merit Bonus Pay Proposal for Senior Management; Financial Report; Status Report; Informational Items; Report of the Administration Committee; Report on the Finance committee; Report of the Operations Committee; Public Participation; Presentation on Industry Trends; Recess to Travel to Fund's Lubbock Regional Office; Tour of Lubbock Regional Office and Presentation on "Life of a Claim"; Call to Order; Roll Call; Executive Session; Action Items Resulting from Executive Session Deliberations; Announcements; Adjourn.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: October 8, 1998, 2:02 p.m.

TRD-9815780



Saturday, October 17, 1998, 8:00 p.m.

2551 South Loop 289, The Renaissance Room

Lubbock

Organizational Effectiveness Committee of the Board of Directors

AGENDA:

Call to Order; Roll Call; Nomination of 1999 Board Officers (Vice Chair and Secretary); Nomination of 1999 Organizational Effectiveness Committee (OEC) Members; Executive Session; Action Items Resulting from Executive Session Deliberations; Public Participation; Adjourn.

Contact: Jeanette Ward, 221 West 6th Street, Suite 300, Austin, Texas 78701, 512/404-7142.

Filed: October 8, 1998, 2:03 p.m.

TRD-9815786



Texas Workforce Commission

Tuesday, October 20, 1998, 10:00 a.m.

Thomas Rivera Conference Center, 3rd Floor Union East

El Paso

Border Summit on Adult Bilingual Education

AGENDA:

Opening remarks and introduction; Welcome; Border overview; Profile of affected workers; Employers from Border area; Roles, responsibilities and barriers, Gaps in the existing system; Lessons learned and what we have done; Comments on solutions and barriers; and Next steps.

Contact: J. Randel (Jerry) Hill, 101 East 15th Street, Austin, Texas 78778, 512/463-8812.

Filed: October 7, 1998, 4:08 p.m.

TRD-9815678



Regional Meetings

Meeting filed October 7, 1998

Austin Transportation Study, Policy Advisory Committee met at Joe C. Thompson, Conference Center, Room 2.102, 26th and Red River, Austin, October 12, 1998, at 6:00 p.m. Information may be obtained from Michael R. Aulick, 301 West 2nd Street, Austin, Texas 78701, 512/499-2275. TRD-9815659.

Bexar-Medina-Atascosa Counties Water Control and Improvement District #1, Board of Directors met at 226 State Highway 132, Natalia, October 13, 1998, at 8:30 a.m. Information may be obtained from John W. Ward, III, 226 State Highway 132, Natalia, Texas 78059, 830/665-2132. TRD-9815677.

Brown County Appraisal District, Board of Directors met at 403 Fisk Avenue, Brownwood, October 12, 1998, at Noon. Information may be obtained from Doran E. Lemke, 403 Fisk Avenue, Brownwood, Texas 76802, 915/643-5676. TRD-9815656.

Central Texas Council of Governments, Criminal Justice Advisory Board met at 302 East Central Avenue, Belton, October 16, 1998, at ????. Information may be obtained from Beth Stokes, 302 East Central Avenue, Belton, Texas 76513, 254/933-7075 or fax 254/939-0885. TRD-9815679.

Education Service Center Region V, Board met at the Region V Conference Center, 1750 Highway 96 Bypass, Silsbee, October 14,

1998, at 1:00 p.m. Information may be obtained from Robert E. Nicks, 2995 Delaware Street, Beaumont, Texas 77703-4299, 409/838-5555. TRD-9815655.

High Plains Underground Water Conservation District No. One, Board Meeting met at 2930 Avenue Q, Board Room, Lubbock, October 13, 1998, at 10:00 a.m. Information may be obtained from A. Wayne Wyatt, 2930 Avenue Q, Lubbock, Texas 79405, 806/762-0181. TRD-9815661.

San Antonio-Bexar County Metropolitan Planning Organization, Pedestrian Mobility Task Force met at "B" Room-Municipal Plaza Building, 114 Commerce Street, San Antonio, October 21, 1998, at 3:30 p.m. Information may be obtained from Jeanne Geiger, 603 Navarro, Suite 904, San Antonio, Texas 78205, 210/227-8651. TRD-9815660.

South Plains Association of Governments, Executive Committee met at 1323 58th Street, Lubbock, October 13, 1998, at 9:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730. 806/762-8721. TRD-9815652.

South Plains Association of Governments, Board of Directors met at 1323 58th Street, Lubbock, October 13, 1998, at 10:00 a.m. Information may be obtained from Jerry D. Casstevens, P.O. Box 3730, Lubbock, Texas 79452-3730. 806/762-8721. TRD-9815651.

Meetings filed October 8, 1998

Atascosa County Appraisal District, Atascosa Review Board met at 4th and Avenue J, Poteet, October 14, 1998, at 9:00 a.m. Information may be obtained from Curtis Stewart, P.O. Box 139, Poteet, Texas 78065-0139, 830/742-3591. TRD-9815800.

Bastrop Central Appraisal District, Board of Directors met at 1200 Cedar Street, Bastrop, October 15, 1998, at 7:30 p.m. Information may be obtained from Dana Ripley, 1200 Cedar Street, Bastrop, Texas 78602, 512/303-3536. TRD-9815781.

Bi-County Water Supply Corporation met at Arch David Road, FM 2254, Pittsburg, October 13, 1998, at 7:00 p.m. Information may be obtained from Janell Larson, P.O. Box 848, Pittsburg, Texas 75686, 903/856-5840. TRD-9815808.

Brazos Valley Council of Governments, Regional Corporation Advisory Committee, met at 1796 East 29th Street, Bryan, October 14, 1998, at 10:00 a.m. Information may be obtained from Tom Wilkinson, P.O. Drawer 4128, Bryan, Texas 77805-4128, 409/775-4244 or 409/775-3466. TRD-9815694.

Brazos Valley Workforce Development Board, Planning and Oversight Committee met at 1905 South Texas Avenue, Bryan, October 9, 1998, at 9:00 a.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77802, 409/821-0202 or fax 409/779-9297. TRD-9815796.

Brazos Valley Workforce Development Board, Executive Committee met at 1905 South Texas Avenue, Bryan, October 15, 1998, at 1:30 p.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77802, 409/821-0202 or fax 409/779-9297. TRD-9815773.

Brazos Valley Workforce Development Board met at 1905 South Texas Avenue, Bryan, October 15, 1998, at 2:00 p.m. Information may be obtained from Mollie Moore, 1903 Texas Avenue South, Bryan, Texas 77802, 409/821-0202 or fax 409/779-9297. TRD-9815774.

Cass County Appraisal District, Board of Directors met at 502 North Main Street, Linden, October 13, 1998, at 7:00 p.m. Information

may be obtained from Ann Lummus, 502 North Main Street, Linden, Texas 903/756-7545. TRD-9815766.

Colorado River Municipal Water District, Board of Director met at 400 East 24th Street, Big Springs, October 14, 1998, at 10:00 a.m. Information may be obtained from John W. Grant, P.O. Box 869, Big Spring, Texas 79721-0869. TRD-9815794.

Concho Valley Council of Governments, Economic Development District Meeting met at 5002 Knickerbocker Road, San Angelo, October 14, 1998, at 4:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Antonio, Texas 76906, 915/944-9666. TRD-9815772.

Concho Valley Council of Governments, Executive Committee Meeting met at 5002 Knickerbocker Road, San Angelo, October 14, 1998, at 7:00 p.m. Information may be obtained from Robert R. Weaver, P.O. Box 60050, San Antonio, Texas 76906, 915/944-9666. TRD-9815789.

Dallas Housing Authority, Dallas Housing Authority Board of Commissioners met at Dallas Housing Authority, 3939 North Hampton Road, Dallas, October 15, 1998, 4:00 p.m. Information may be obtained from Betty Horn, 3939 North Hampton Road, Dallas, Texas 75212, 214/951-8302. TRD-9815783.

Denton Central Appraisal District, Appraisal Review Board met and will meet at 3911 Morse Street, Denton, October 21-28, 1998, at 9:00 a.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, 940/566-0904. TRD-9815688.

Denton Central Appraisal District, Board of Directors will meet at 3911 Morse Street, Denton, November 9, 1998, at 4:00 p.m. Information may be obtained from Connie Bradshaw, P.O. Box 2816, Denton, Texas 76202-2816, 940/566-0904. TRD-9815687.

East Texas Council of Governments, Executive Committee of the Workforce Development Board met at 3119 Estes Parkway, Longview, October 15, 1998, at 9:00 a.m. Information may be obtained from Glynn Knight, 3900 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9815809.

East Texas Council of Governments, Workforce Development Board met at 3119 Estes Parkway, Longview, October 15, 1998, at 10:00 a.m. Information may be obtained from Glynn Knight, 3900 Stone Road, Kilgore, Texas 75662, 903/984-8641. TRD-9815777.

Education Service Center Region XII, Board of Directors met at 2101 West Loop 340, Waco, October 15, 1998, at 10:00 a.m. Information may be obtained from Tom Norris or Vivian L. McCoy, P.O. Box 23409, Waco, Texas 76702-3409, 817/666-0707. TRD-9815803.

Edwards Aquifer Authority, Board Meeting met in a revised agenda at 1615 North St. Mary's Street, San Antonio, October 13, 1998, at 4:00 p.m. Information may be obtained from Mary Esther R. Cortez, 1615 North St. Mary's Street, San Antonio, Texas 78212, 210/222-2204. TRD-9815689.

Falls County Central Appraisal District, Board of Directors met at the Intersection Highway 6 and 7, Falls County Courthouse, 1st Floor, Marlin, October 19, 1998, at 5:30 p.m. Information may be obtained from Joyce Collier, P.O. Box 430, Marlin, Texas 76661, TRD-9815805.

Far West Texas Water Planning Group, Committee Meeting met at Rio Grande Council of Governments, 1100 North Stanton, Suite 603, El Paso, October 19, 1998, at 2:00 p.m. Information may be obtained from Michele Maley, 1100 North Stanton, Suite 610, El Paso, Texas 79902, 915/533-0998. TRD-9815767.

Gregg Appraisal District, Appraisal Review Board met at 1333 East Harrison Road, Longview, October 15, 1998, at 9:00 a.m. Information may be obtained from Marvin F. Hahn, Jr., 1333 East Harrison Road, (FM 1845), Longview, Texas 75604-5537, 903/238-8823. TRD-9815690.

Gonzales County Appraisal District, Board of Director met at 928 St. Paul Street, Gonzales, October 15, 1998, at 6:00 p.m. Information may be obtained from Melissa A. Kilpatrick or Glenda Strackbein, 928 St. Paul, Gonzales, Texas 78629, 830/672-2879 or fax 830/672-8345. TRD-9815807.

Houston-Galveston Area Council met at the Red Lion Hotel-Lobby Level, 2525 West Loop South, Main Ballroom, Houston, October 13, 1998, at 9:00 a.m. (rescheduled from October 6, 1998). Information may be obtained from Carol Kimmick, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9815778.

Northeast Texas Rural Rail Transportation District, Board met at the Hopkins County Courthouse, Judges's Chamber, Second Floor, Sulphur Springs, October 14, 1998, at 3:00 p.m. Information may be obtained from Sue Ann Harting, 2821 Washington Street, Greenville, Texas 75401, 903/450-0140. TRD-9815696.

Palo Pinto Appraisal District, Board of Directors met at 200 Church Avenue, Palo Pinto, October 15, 1998, at 3:00 p.m. Information may be obtained from Carol Holmes or Donna Rhoades, P.O. Box 250, Palo Pinto, Texas 76484, 949/659-1239. TRD-9815775.

San Antonio River Authority, South Central Texas Regional Water Planning Group met at 100 East Guenther Street, Boardroom, San Antonio, October 14, 1998, 10:00 a.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, 210/227-1373. TRD-9815764.

South East Texas Regional Planning Commission, Executive Committee met at Beaumont City Council Chambers, 801 Main, Beaumont, October 21, 1998, 7:00 p.m. Information may be obtained from Jackie Vice Solis, P.O. Drawer 1387, Nederland, Texas 77627, 409/727-2384. TRD-9815695.

Tri County Special Utility District, Board of Directors Meeting met in a revised agenda at Highway 7 East, Marlin, October 12, 1998, at 7:30 p.m. Information may be obtained from Patsy Booher, P.O. Box 976, Marlin, Texas 7661, 254/803-3553. TRD-9815693.

Uvalde County Appraisal District, Appraisal Review Board met at 209 North High Street, Uvalde, October 13, 1998, at 9:00 a.m. Information may be obtained from Alida E. Lopez, 209 North High Street, Uvalde, Texas 78801, 830/278-1106, Ext. 16. TRD-9815776.

Meetings filed October 9, 1998

Burnet Central Appraisal District, Board of Directors met at 110 Avenue H, Suite 106, Marble Falls, October 15, 1998, at Noon. Information may be obtained from Barbara Ratliff, P.O. Box 908, Burnet Texas 78611, 512/756-8291. TRD-9815846.

Coleman County Water Supply Corporation, Board of Directors met at 214 Santa Anna Avenue, Coleman, October 14, 1998, at 1:30 p.m. Information may be obtained from Davey Thweatt, 214 Santa Anna Avenue, Coleman, Texas 76834, 915/625-2133. TRD-9815851.

Creedmoor Maha WSC, Monthly Board Meeting met at 1699 Laws Road, Mustang Ridge, October 14, 1998, at 7:00 p.m. Information may be obtained from Charles Laws, 1699 Laws Road, Mustang Ridge, Texas 78610, 512/243-2113. TRD-9815864.

Dallas Area Rapid Transit, Legislative AdHoc Committee Meeting met in the Conference Room C, First Floor, 1401 Pacific Avenue,

Dallas, October 13, 1998, at 10:00 a.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815869.

Dallas Area Rapid Transit, Administrative Meeting met in the Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, October 13, 1998, at Noon. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815878.

Dallas Area Rapid Transit, External Communications Meeting met in the Conference Room D, First Floor, 1401 Pacific Avenue, Dallas, October 13, 1998, at 2:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815871.

Dallas Area Rapid Transit, Operations Meeting met in the Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, October 13, 1998, at 3:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815872.

Dallas Area Rapid Transit, Committee of the Whole Meeting met in the Conference Room C, First Floor, 1401 Pacific Avenue, Dallas, October 13, 1998, at 4:00 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815873.

Dallas Area Rapid Transit, Board of Directors, met in the Board Room, First Floor, 1401 Pacific Avenue, Dallas, October 13, 1998, at 6:30 p.m. Information may be obtained from Paula J. Bailey, P.O. Box 660163, Dallas, Texas 75266-0163. TRD-9815874.

Dallas Housing Authority, Dallas Housing Authority Board of Commissioner met in a revised agenda at the Dallas Housing Authority, 3939 North Hampton, Dallas, October 15, 1998, at 4:00 p.m. Information may be obtained from Betsy Horn, 3939 North Hampton Road, Dallas, 75212, 214/951-8302. TRD-9815884.

Education Service Center, Region I, Board of Directors met at 1900 West Schunior, Edinburg, October 13, 1998, at 6:00 p.m. Information may be obtained from Dr. Sylvia R. Hatton, 1900 West Schunior, Edinburg, Texas 78539, 956/984-6000. TRD-9815836.

Education Service Center, Region II, Board of Directors met at 209 North Water (Board Room #102), Corpus Christi, October 15, 1998, at 6:30 p.m. Information may be obtained from Dr. Ernest Zamora, 209 North Water, Corpus Christi, Texas 78401, 512/883-9288, Ext. 2200. TRD-9815880.

Education Service Center, Region VIII, Board of Director's Meeting met at the Alps Restaurant, 106 East Burton Road, Mt. Pleasant, October 22, 1998, at 6:30 p.m. Information may be obtained from Scott Ferguson, P.O. Box 1894, Mt. Pleasant, Texas 75456-1894, 903/572-8551. TRD-9815816.

Education Service Center, Region X, Board of Directors met at 400 East Spring Valley Road, Richardson, October 14, 1998, at 12:30 p.m. Information may be obtained from Joe Farmer, 400 East Spring Valley Road, Richardson, Texas 75081, 972/384-1000. TRD-9815835.

Education Service Center, Region XIV, Board of Directors met at 1850 Highway 351, Abilene, Texas October 15, 1998, at 5:30 p.m. Information may be obtained from Taressa Huey, 1850 Highway 351, Abilene, Texas 79601, 915/675-8608. TRD-9815868.

Golden Crescent Workforce Development Board, Finance Committee met at 2401 Houston Highway, Victoria, October 14, 1998, at 3:00 p.m. Information may be obtained from Laura G. Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9815904.

Golden Crescent Workforce Development Board, Policy and Planning Committee met at 2401 Houston Highway, Victoria, October 14, 1998, at 4:00 p.m. Information may be obtained from Laura G. Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9815905.

Harris County Appraisal, Appraisal Review Board met at 2800 North Loop West, Houston, October 16, 1998, at 8:00 a.m. Information may be obtained from Bob Gee, 2800 North Loop West, Houston, Texas 77092, 713/957-5222. TRD-9815818.

Heart of Texas Council of Governments, Workforce Development Board met at 320 Franklin Avenue, Waco, October 15, 1998, at 5:30 p.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9815890.

Heart of Texas Council of Governments, Executive Committee met at 300 Franklin Avenue, Waco, October 22, 1998, at 10:00 a.m. Information may be obtained from Donna Tomlinson, 320 Franklin Avenue, Waco, Texas 76701, 254/756-7822. TRD-9815891.

Henderson County Appraisal District, Board of Directors met at 1751 Enterprise Street, Athens, October 15, 1998, at 5:30 p.m. Information may be obtained from Lori Hembree, 1751 Enterprise Street, Athens, Texas 75751, 903/675-9296. TRD-9815849.

Houston-Galveston Area Council, Projects Review Committee met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, October 20, 1998, at 9:00 a.m. Information may be obtained from Rowena Ballas, 3555 Timmons Lane, Suite 500, Houston, Texas 77027, 713/627-3200. TRD-9815867.

Hunt County Appraisal District, Board of Directors Special Meeting met at 4801 King Street, Greenville, October 15, 1998, at Noon. Information may be obtained from Shirley Smith, P.O. Box 1339, Greenville, Texas 75403, 903/454-3510. TRD-9815850.

Jasper County Appraisal District, Board of Directors met at 137 North Main, Jasper, October 13, 1998, at 6:00 p.m. Information may be obtained from David W. Luther, 137 North Main, Jasper, Texas 75951, 409/384-2544. TRD-9815883.

Kempner Water Supply Corporation, Board of Directors met at Highway 190, Kempner Water Supply Corporation, Kempner, October 15, 1998, at 6:30 p.m. Information may be obtained from Donald W. Guthrie, P.O. Box 103, Kempner, Texas 76539, 512/932-3701. TRD-9815848.

Lake Livingston Water Supply and Sewer Service Corporation, Board of Director's Meeting met at 622 South Washington, Livingston, October 15, 1998, at 10:00 a.m. Information may be obtained from M.D. Simmons, P.O. Box 1149, Livingston, Texas 77351, 409/327-3107 or fax 409/327-8959. TRD-9815853.

Lake Livingston Water Supply and Sewer Service Corporation, Special Board of Director's Meeting met at 622 South Washington, Livingston, October 17, 1998, at 1:00 p.m. Information may be obtained from M.D. Simmons, P.O. Box 1149, Livingston, Texas 77351, 409/327-3107 or fax 409/327-8959. TRD-9815854.

Lower Colorado River Authority, Planning and Public Policy Committee met at 3701 Lake Austin Boulevard, Hancock, Building, Board Conference Room, Austin, October 13, 1998, at 10:00 a.m. Information may be obtained from Glen E. Taylor, P.O. Box 220, Austin, Texas 78767, 512/473-3371. TRD-9815878.

Nolan County, Central Appraisal District, Board of Director met at the Nolan County Courthouse, Third Floor, 100 East Third, Sweetwater, October 13, 1998, at 1:00 p.m. Information may be obtained from

Patricia Davis, P.O. Box 1256, Sweetwater, Texas 79556, 915/235-8421. TRD-9815877.

Riceland Regional Mental Health Authority, Executive Committee Meeting met at 3007 North Richmond Road, Wharton, October 15, 1998, at 1:00 p.m. Information may be obtained from Marjorie Dornak, P.O. Box 869, Wharton, Texas 77488, 409/532-3098. TRD-9815907.

Trinity River Authority of Texas, Legal Committee met at 5300 South Collins Street, Arlington, October 16, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9815852

West Central Texas Workforce Development Board met at 1025 EN 10th Street, Abilene, October 21, 1998, at 10:30 a.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9815912.

Wood County Appraisal District, Board of Directors met at 210 Clark Street, P.O. Box 518, Quitman, October 15, 1998, at 1:30 p.m. Information may be obtained from Los McKibben or Rhonda Powell, P.O. Box 518, Quitman, Texas 75783-0518, 903/763-4891. TRD-9815817.

Meetings filed October 12, 1998

Austin Travis County MHMR Center, Human Resources Board Committee met at 1700 South Lamar, Building One, Suite 102A, Austin, October 19, 1998, at 4:30 p.m. Information may be obtained from Arvelle Dwyer, 1430 Collier Street, Austin, Texas 78704, 512/440-4032. TRD-9815960.

Brazos River Authority, Administration and Audit Committee Board of Directors met at 4400 Cobbs Drive, Waco, October 19, 1998, at 9:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9815955.

Brazos River Authority, Water Utilization Committee Board of Directors met at 4400 Cobbs Drive, Waco, October 19, 1998, at 10:00 a.m. Information may be obtained from Mike Bukala, P.O. Box 7555, Waco, Texas 76714-7555, 254/776-1441. TRD-9815961.

Education Service Center, Region III, Board of Directors met at 3901 Houston Highway, Victoria, October 19, 1998, at 11:30 a.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573-0731. TRD-9815957.

Education Service Center, Region III, Board of Directors met at 3901 Houston Highway, Victoria, October 19, 1998, at 1:00 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573-0731. TRD-9815962.

Golden Crescent Workforce Development Board met at 2401 Houston Highway, Victoria, October 15, 1998, at 4:30 p.m. Information may be obtained from Laura G. Sanders, 2401 Houston Highway, Victoria, Texas 77901, 512/576-5872. TRD-9815954.

Houston-Galveston Area Council, Board of Directors Meeting and Budget Review Session met at 3555 Timmons Lane, Conference Room A, Second Floor, Houston, October 20, 1998, at 10:00 and 11:00 a.m. Information may be obtained from Mary Ward, P.O. Box 22777, Houston, Texas 77227, 713/627-3200. TRD-9815940.

Mills County Appraisal District, Board of Directors met at Mills County Courthouse, Jury Room, Fisher Street, Goldthwaite, October 20, 1998, at 6:30 p.m. Information may be obtained from Lewis (Bo) Wright, P.O. Box 565, Goldthwaite, Texas 76844, 915/648-2253. TRD-9815956.

Trinity River Authority of Texas Resources Development Committee met at 5300 South Collins Street, Arlington, October 19, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9815966.

Meetings filed October 13, 1998

Deep East Council of Governments, Economic Development Committee met at Iris and Ann Howard Civic Center, Loop 505 North, Newton, October 22, 1998, at 10:30 a.m. Information may be obtained from Rusty Phillips, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704 or fax 409/384-5390. TRD-9815983.

Deep East Council of Governments, Board of Directors and Grants Application Review Committee Meeting met at Iris and Ann Howard Civic Center, Court Street, Newton, October 22, 1998, at 11:00 a.m. Information may be obtained from Walter G. Diggles, Sr., 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704 or fax 409/384-5390. TRD-9815982.

Deep East Council of Governments, Grants Application Review Committee met at Iris and Ann Howard Civic Center, Loop 505 North, Newton, October 22, 1998, at 11:00 a.m. Information may be obtained from Rance McDonald, 274 East Lamar Street, Jasper, Texas 75951, 409/384-5704 or fax 409/384-5390. TRD-9815984.

Eastland County Appraisal District, Board of Directors met at 100 Main Street, Eastland, October 21, 1998, at 1:00 p.m. Information may be obtained from Steve Thomas, P.O. Box 914, Eastland, Texas 76448, 254/629-8597. TRD-9815993.

Lower Rio Grande Valley Development Council, Hidalgo County Metropolitan Planning Organization met at TxDOT District Office, 600 West Expressway, US 83, Pharr, October 22, 1998, at 7:00 p.m. Information may be obtained from Edward L. Molitor, 311 North 15th Street, McAllen, Texas 78501-4705, 956/682-3481. TRD-9815995.

Region D Regional Water Planning Group, North East Texas Regional Water Planning Group met at Titus County Civic Center, Highway 271, South of IH 30, Mt. Pleasant, October 21, 1998, at 3:00 p.m. Information may be obtained from Walt Sears, Jr., P.O. Box 955, Hughes Springs, Texas 75656, 903/696-7538. TRD-9815994.

San Antonio River Authority, Audit Committee met at 100 East Guenther Street, Board Room, San Antonio, October 21, 1998, at 1:30 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, 210/227-1373. TRD-9815987.

San Antonio River Authority, Board of Director met at 100 East Guenther Street, Board Room, San Antonio, October 21, 1998, at 2:00 p.m. Information may be obtained from Fred N. Pfeiffer, P.O. Box 830027, San Antonio, Texas 78283-0027, 210/227-1373. TRD-9815986.

Trinity River Authority of Texas, Legal Committee met at 5300 South Collins Street, Arlington, October 16, 1998, at 10:30 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9815988.

Trinity River Authority of Texas, Utility Service Committee met at 5300 South Collins Street, Arlington, October 20, 1998, at 10:00 a.m. Information may be obtained from James L. Murphy, P.O. Box 60, Arlington, Texas 76004, 817/467-4343. TRD-9815991.

Upper Rio Grande Workforce Development Board met at the Sul Ross University, Building 13, Alpine, October 16, 1998, at 2:00 p.m. Information may be obtained from Norman R. Haley, 5919 Brook Hollow, El Paso, Texas 79925, 915/772-5627, Ext. 406. TRD-9815999.

Meetings filed October 14, 1998

Bosque County Central Appraisal District, Board of Directors met at 202 South Highway 6, Meridian, October 22, 1998, at 7:00 p.m. Information may be obtained from Janice Henry, P.O. Box 393, Meridian, Texas 76655-0393. TRD-9816058.

Dewitt County Appraisal District, Board of Directors met at 103 Bailey, Cuero, October 20, 1998, at 7:30 p.m. Information may be obtained from Beverly Malone, P.O. Box 4, Cuero, Texas 77954, 512/275-5753. TRD-9816091.

Education Service Center, Region III, Board of Directors met at 1905 Leary Lane, Victoria, October 19, 1998, at 1:30 p.m. Information may be obtained from Julius D. Cano, 1905 Leary Lane, Victoria, Texas 77901, 512/573-0731. TRD-9816085.

Guadalupe-Blanco River Authority, Retirement and Benefit Center met in a revised agenda at Aquarena Center, One Aquarena Springs Drive, San Marcos, October 21, 1998, at 9:30 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9816063.

Guadalupe-Blanco River Authority, Board of Directors met at the Aquarena Center, One Aquarena Springs Drive, San Marcos, October 21, 1998, at 10:00 a.m. Information may be obtained from W.E. West, Jr., 933 East Court Street, Seguin, Texas 78155, 830/379-5822. TRD-9816069.

Johnson County Central Appraisal District, Appraisal Review Board will meet at 109 North Main ARB Conference Room, Cleburne, October 29, 1998, at 9:00 a.m. Information may be obtained from Don Gilmore, 109 North Main, Cleburne, Texas 76031, 817/645-3986. TRD-9816066.

West Central Texas Workforce Development Board, Executive Committee met at 1025 EN 10th Street, Abilene, October 21, 1998, at 12:30 p.m. Information may be obtained from Mary Ross, 1025 EN 10th Street, Abilene, Texas 79601, 915/672-8544. TRD-9816092.



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.

Brazos Valley Council of Governments

Requests for Bids

The Brazos Valley Council of Governments is requesting bids for commercial lease property to be used by the Council of Governments and their programs in Bryan-College Station. This property must meet the following specifications:

- * Located in Bryan-College Station city limits
- * Accessible to a city bus line
- * Must be a minimum of 12,000 square feet
- * Must accommodate a staff of 35-45
- * Must have adequate parking for staff and clients, to include handicapped parking
- * Building must be wheelchair accessible
- * Must be a full service lease with landlord paying taxes, insurance, utilities, maintenance, and janitorial services

Bids must be received by October 30, 1998 and should be addressed to: Mr. Tom Wilkinson, Jr., Executive Director, Brazos Valley Council of Governments, P.O. Box 4128, Bryan, Texas, 77805-4128.

TRD-9815996

Tom Wilkinson, Jr.

Executive Director

Brazos Valley Council of Governments

Filed: October 13, 1998



The Brazos Valley Workforce Development Board is requesting bids for commercial lease property to be used by the Workforce Center Operator and their programs in Bryan-College Station. This property must meet the following specifications:

- * Located in Bryan-College Station city limits
- * Accessible to a city bus line
- * Must be a minimum of 12,000 square feet
- * Must accommodate a staff of 35-45

* Must have adequate parking for staff and clients, to include handicapped parking

* Building must be wheelchair accessible

* Must be a full service lease with landlord paying taxes, insurance, utilities, maintenance, and janitorial services

Bids must be received by October 30, 1998 and should be addressed to: Mr. Nick Gilley, Workforce Board Chairman, Brazos Valley Workforce Development Board, P.O. Box 4128, Bryan, Texas, 77805-4128.

TRD-9815997

Nick Gilley

Workforce Board Chairman

Brazos Valley Council of Governments

Filed: October 13, 1998



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 §501. Requests for federal consistency review were received for the following projects(s) during the period of October 6, 1998, through October 13, 1998:

FEDERAL AGENCY ACTIONS:

Applicant: Mariner Energy, Inc.; Location: In the Galveston Anchorage Area and Fairway, in Galveston Area Blocks 144 and 152 and High Island Area, Blocks 153 and 154, offshore, Texas, Gulf of Mexico; Project No: 98-0481-F1; Description of Proposed Action: The applicant proposes to install, operate and maintain a 10-inch pipeline in the fairway and anchorage area. The pipeline will be installed by jetting and will be buried to a depth of 10 feet in the fairway and 16.5 feet in the anchorage area. Purpose of the work is to transport natural gas, gas condensate and produced

hydrocarbons from Mariner's caisson well #1 in Galveston Block 144 to Shell's jacket platform in High Island Block 154; Type of Application: U.S.A.C.E. permit application #21376 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Galveston Youth Soccer Club; Location: Between Stewart Road and FM 3005, immediately east of 7 Mile Road, in Galveston, Galveston County, Texas; Project No: 98-0482-F1; Description of Proposed Action: The applicant proposes to place fill material into 0.80 acres of wetlands. The Corps has verified that the 24.56-acre project site contains a total of 1.63 acres of wetlands. These wetlands are split into eight separate areas and range in size from 0.0006 acres to 0.56 acres. Four of these areas will be completely avoided, three will be partially filled and one will be completely filled. Purpose of the work is to create a recreational complex. The complex will contain soccer fields as well as volleyball, basketball, and horseshoe courts, picnic areas and other recreational areas. To compensate for wetland impacts the applicant proposes to create 1.49 acres of similar wetlands using the seed bank from filled wetland areas. Wetland and upland trees will be planted on the site for aesthetics, shade and songbird habitat; Type of Application: U.S.A.C.E. permit application #21402 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: Shell Offshore, Inc.; Location: In the Galveston Anchorage Area, Galveston Block 182, offshore Texas, Gulf of Mexico; Project No: 98-0483-F1; Description of Proposed Action: The applicant proposes to change surface coordinate locations described in Corps Public Notice 21256, issued on June 4, 1998. The coordinates were X=3,393,512.00 and Y=520,401. The new coordinates are X=3,392,854.00 and Y=518,665. The applicant proposes to install and maintain structures, to drill a well and produce the well for oil and gas. The structures will be further than two nautical miles from any other permitted structure in the anchorage area; Type of Application: U.S.A.C.E. permit application #21256 under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403).

Applicant: Solvay Polymers, Inc.; Location: On a 100-acre tract of land immediately east of the applicant's existing facility on Battleground Road in Deer Park, Harris County, Texas; Project No: 98-0484-F1; Description of Proposed Action: The applicant proposes to place fill material into 9.7 acres of existing isolated wetlands, on the subject tract to facilitate the expansion of their existing commercial plant. The existing wetlands consist of 12 depressional areas ranging in size up to 4.82 acres. The proposed expansion would allow for an increase in the applicant's polypropylene and polyethylene production, and would consist of rail spur/rail car storage areas, production units, maintenance buildings, an administrative building, parking, a field storage area, access roads, relocation of pipeline right-of-ways, stormwater and process water retention areas, and an emergency flare and restricted access safety zone. As mitigation of the wetland impacts, the applicant is proposing to purchase 10 credits from the Katy-Cypress Mitigation Bank; Type of Application: U.S.A.C.E. permit application #21455 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: Southwest Shipyard L.P.; Location: At 18310 Market Street, at the intersection of Interstate Highway 10 East and the San Jacinto River, in Channelview, Harris County, Texas; Project No: 98-0485-F1; Description of Proposed Action: The applicant proposes to expand a rail system which transfers barges for repair from water to land via a drydock and the rail system. This expansion would also require an adjustment to loading platform dock for realignment. Two sides of the existing three-sided dock would be removed and re-installed to form a slightly larger structure. The new dock structure

would measure 51 by 72-feet, with approximately 62 cubic yards of fill to be placed below mean high water. An existing mooring dolphin would also be removed; Type of Application: U.S.A.C.E. permit application #17394(01) under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. 403), and §404 of the Clean Water Act (33 U.S.C.A. §§125-1387).

Applicant: Vintage Petroleum, Inc.; Location: In Trinity Bay in State Tracts 5-8B, 5-8A, 6-7A, 10-11A, 10-11B, 10-11C, 10-11D, and 10-11E, in Chambers County Texas. The project also involves the Vintage Petroleum, Inc. facilities on the Solomon Barrow Survey, A-3, Chambers County, Texas. The directions to the shore site are: from the intersection of McCullum Park Road with Point Barrow Road, go southeast on Point Barrow Road approximately 0.6 mile; then turn left on an access easement to the Vintage Petroleum, Inc. facility; Project No: 98-0486-F1; Description of Proposed Action: The applicant proposes to install a 6-inch pipeline from their existing C-2 Complex Platform in State Tract 5-8B, northwesterly to a point on the northwest shore line of Trinity Bay adjacent to the Vintage Petroleum, Inc. property. This proposed pipeline would replace an existing 8-inch pipeline, and is designed to transport high-pressure natural gas production from the Fisher's Reef and Trinity Bay Fields to shore. The existing 8-inch pipeline would be converted to transport produced water from the C-2 Complex to shore. From the platform to the approximate 4-foot water depth, the pipeline would be buried by jetting. From the approximate 4-foot water depth to shore, a marsh backhoe or marsh dragline would be used to trench the remainder of the pipeline. After placement of the pipeline in the trench, the trench would be backfilled to return the bay bottom to the approximate original contour. Firm sand from the trench would be placed alongside the trench and used as backfill after the pipeline is laid. Sandbags would be used to prevent any erosion where the pipeline would be routed under the concrete bulkhead at the shoreline; Type of Application: U.S.A.C.E. permit application #21449 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).

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-9816021

Garry Mauro

Chairman

Coastal Coordination Council

Filed: October 13, 1998

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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 Articles 1D.003 and 1D.009, Title 79, Revised Civil Statutes

of Texas, as amended (Articles 5069-1D.003 and 1D.009, Vernon's Texas Civil Statutes).

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 10/19/98 - 10/25/98 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Art. 1D.003 and 1D.009 for the period of 10/19/98 - 10/25/98 is 18% for Commercial over \$250,000.

¹Credit for personal, family or household use.

²Credit for business, commercial, investment or other similar purpose.

TRD-9816083

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: October 14, 1998



Deep East Texas Council of Governments

Request for Proposal

Pursuant to Subchapter A, Sections 2254-001 et.seq. Texas Government Code, the Deep East Texas Council of Governments (DETCOG) invites professionals with demonstrated competence and qualifications and documented expertise in the field of indirect cost recovery and cost allocation plans for governmental units to submit proposals to prepare and negotiate with the federal and state governments, under the provisions of OMB Circular A-87 and the State of Texas Uniform Grants and Management Standards (UGMS) consolidated agency wide cost allocation plans for the fiscal year ending September 30, 1999. DETCOG intends to award the contract for this consultant service to the proposer clearly most qualified to perform this service, subject to negotiation of a fair and reasonable price.

Proposers will be expected to develop a cost allocation plan that enables DETCOG to recover the maximum indirect costs possible from federal and state programs. The contractor selected will be responsible for all aspects of the plan, including obtaining raw costs and statistical data, identifying allocable costs, preparing and submitting the plan, and negotiating the final plan with the federal government and the state cognizant agency for use during the fiscal year beginning October 1, 1998. Proposals must include a description of the system to be used to extract allowable costs from central administrative services and for allocating such costs. Contractor may be required to prepare alternative allocation tables using different allocation bases to demonstrate maximum feasible recovery options.

As a component of the cost allocation plan, the contractor selected must also identify the costs of providing support services to each funding agency. This component must identify agencies that use services from central services (for example, auditing, accounting, centralized purchasing, human resource management) in carrying out their programs and the type and dollar amount of services used. The contractor selected will be responsible for all aspects of this component. Proposals must include a description of the system to be used to extract allowable costs from central government services and for allocating such costs.

A complete set of workpapers used to prepare the plan must be kept and provided to the Deep East Council of Governments upon request. The contractor is required to provide 12 copies of the summary of fixed costs related to the cost allocations from the completed plan and 12 copies of the summary costs related to the funding federal and state agencies from the completed plan. The Deep

East Texas Council of Governments will evaluate each proposal and reserves the right to reject any and all proposals. DETCOG assumes no responsibility for expenses incurred in preparing responses to this solicitation. If selected, the contractor will be chosen on the basis of proposal content, the proposer's demonstrated experience, competence, knowledge and qualifications and ability to complete and submit the plan by December 31, 1998.

A copy of a preliminary plan may be obtained by contacting Patricia DuBose, Controller, Deep East Texas Council of Governments, 274 East Lamar, Jasper, Texas, 75951 (telephone 409-384- 5704).

All proposals must be at the above address no later than 3:00 p.m., November 2, 1998. Proposals should be directed to Walter G. Diggles.

TRD-9816097

Walter G. Diggles

Executive Director

Deep East Texas Council of Governments

Filed: October 14, 1998



General Services Commission

Notices to Bidders

SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), AUSTIN, TEXAS, TELEPHONE (512) 463-3417, ON THURSDAY, OCTOBER 29, 1998, AT 3:00 P.M., FOR:

Project No. 96-001F-303: Security System for Robert E. Johnson Legislative Office Building, Austin, Texas. The approximate cost range for this project is \$600,000.00.

Bid Receipt Location: General Services Commission/FCSM, 1711 San Jacinto, Bid Room 180, Austin, Texas, 78701 (P.O. Box 13047, Austin, Texas, 78711). After submitting bid, proceed to the second floor receptionist for directions to public bid opening.

Contractor Qualifications: Prime (security) contractors are required to submit information to the FCSM Division, 1711 San Jacinto, Austin, Texas 78701, on FCSM's Contractor Qualification Form no later than 5:00 P.M., on October 22, 1998, to document compliance with contractor's qualification requirements for this project. Telephone (512) 463-3417 to obtain form. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. Review and acceptance by FCSM of contractor qualification statements is required prior to obtaining bid documents from the Security Consultant. Failure to provide information regarding all requirements may delay acceptance which will delay receiving bid documents.

Pre-Bid Conference: A Mandatory Pre-Bid Conference will be held on Tuesday, October 20, 1998, at 1:30 P.M., at the William B. Travis State Office Building, 1701 Congress Avenue, Austin, Texas, Conference Room 1-111. This will be followed by a walking tour of the Robert E. Johnson Office Building at 4:00 PM, same day. Bidders are required to bring their own hard hats.

Bid Documents: Plans and specifications will be available after October 9, 1998, for prime (security) contractors, at the office of Schiff & Associates, Inc., 1025 Main Street, Bastrop, Texas, 78602, contact William McKool, (512) 321-4421, FAX: (512) 321-1746.

A refundable deposit of \$100.00 for one set will be required for the bid documents. Due to security concerns, the bid documents will NOT be available for review at major Plan Rooms.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9815914
Judy Ponder
General Counsel
General Services Commission
Filed: October 12, 1998

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SEALED BIDS WILL BE RECEIVED BY GENERAL SERVICES COMMISSION (GSC), FACILITIES CONSTRUCTION AND SPACE MANAGEMENT DIVISION (FCSM), P.O. BOX 13047, AUSTIN, TEXAS, 78711-3047, TELEPHONE (512) 463-3417, ON THURSDAY, NOVEMBER 12, 1998, AT 3:00 PM FOR:

Project No. 98-019B-303: Texas Governor's Mansion, Phase 3 Systems Replacement and Porch Restoration, 1010 Colorado, Austin, Texas, 78701. The approximate cost for this project is \$900,000.00.

Bid Receipt Location: Bids will be submitted to the General Services Commission at the Central Services Building, Bid Room 180, 1711 San Jacinto, Austin, Texas, 78701 or mailed to P.O. Box 13047, Austin, Texas, 78711-3047. Clearly mark the project number (99-FCSM-PROJECT NO. 98-019B-303), title and date and time of bid submittal deadline on the outside of the envelope contains a sealed bid.

Contractor Qualifications: General Contractors, Security Subcontractors, Mechanical Subcontractors and Electrical Subcontractors are required to submit a Contractor's Qualifications Form on GSC's form no later than 5:00PM, on Friday, November 6, 1998, to document compliance with contractor's qualification requirements for this project. A copy of GSC's Contractor's Qualifications Form can be obtained by calling FCSM at (512) 463-3417 or the A/E. Information is to be used in determining if a contractor is qualified to receive a contract award for the project. A review by FCSM of contractor's qualifications statements is required seven days prior to bidding.

Bid Documents: Plans and specifications will be available after Monday, October 12, 1998, for prime contractors from Volz & Associates, 2520 Longview, Suite 214, Austin, Texas, 78703, Telephone 476-0433, Fax 476-2198, upon receipt of a refundable deposit of \$100.00 per set. Bid documents will be available for review at the FCSM office, 1711 San Jacinto, Suite 202, Austin, Texas, 78701, Telephone (512) 463-3417, the A/E's offices, and the Plan Rooms of Associated General Contractors, F. W. Dodge Corporation, and the Associated Builders and Contractors.

Pre-Bid Conference: There will be a Pre-Bid Conference on Thursday, November 5, 1998, at 2:00PM, at the GSC/FCSM's office, 1711 San Jacinto, Austin, Texas, 78701. A tour of the site will follow the conference.

Should you have any questions regarding this project, please contact John Davenport at 1711 San Jacinto, Facilities Construction and Space Management Division, Austin, Texas, 78701, (512) 463-3417 or John.Davenport@gsc.state.tx.us.

BIDS ARE TO BE MADE IN ACCORDANCE WITH STATE PROCEDURES.

TRD-9815915
Judy Ponder
General Counsel
General Services Commission
Filed: October 12, 1998

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Office of the Governor

Notices of Invitation for Applications

The Criminal Justice Division of the Office of the Governor, announces the availability of grant funds for local and regional projects under the Fiscal Year 2000 Governor's Criminal Justice Plan for Texas (Plan). Funding is available under the Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP) Fund, the Title V Delinquency Prevention Fund, The Crime Stoppers Assistance Fund, the Texas Narcotics Control Program (Edward Byrne Memorial Fund), the Victims of Crime Act Fund, Violence Against Women Act Fund, and the Safe and Drug-Free Schools and Communities Act Fund. Interested applicants should call or write to the regional councils of governments for their county for information on application deadlines and submission requirements. Applicants must attend at least one application workshop sponsored by CJD or their regional council of government prior to submitting their application for funding. The applicant must contact the criminal justice planner at the regional council of governments for workshop information. Detailed specifications are in the Plan. The application kit, including the Plan and application forms, is available from the Criminal Justice Division, Office of the Governor, the criminal justice planners at the regional councils of governments, and on the Governor's web site at www.governor.state.tx.us.

Contact person: If additional information is needed contact CJD at (512) 463-1919 or the criminal justice planner at your regional council of governments.

Closing Date for Receipt of Applications: The original and one copy of the application for the Texas Narcotics Control Program must be received at CJD by January 11, 1999. The original and one copy of the application for Title V Delinquency Prevention Fund must be received at CJD by December 14, 1998. All other application deadlines are set by the regional councils of governments. Prospective applicants must contact the criminal justice planner at their regional council of governments for relevant deadlines.

Selection Process: Title V Delinquency Prevention Fund applications will be reviewed for eligibility and rated competitively by a committee selected by the director of CJD. All other applications will be prioritized by the Criminal Justice Advisory Committees of the regional councils of governments based on need for the program. Priority listings will be approved by the executive commissions of the regional councils. CJD will review the applications for eligibility and the Governor or his designee will make all final funding decisions.

TRD-9815862
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Filed: October 9, 1998

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The Criminal Justice Division of the Office of the Governor, announces the availability of grant funds for statewide projects under the Fiscal Year 2000 Governor's Criminal Justice Plan for Texas (Plan). Funding is available under the Criminal Justice Planning (421) Fund, the Juvenile Justice and Delinquency Prevention (JJDP) Fund, the Crime Stoppers Assistance Fund, the Texas Narcotics Control Program (Edward Byrne Memorial Fund), the Victims of Crime Act Fund, Violence Against Women Act Fund, and the Safe and Drug-Free Schools and Communities Act Fund. Interested applicants should call or write CJD for information on application

deadlines and submission requirements. Applicants must attend at least one application workshop sponsored by CJD prior to submitting their application for funding. The applicant must contact CJD for workshop information. Detailed specifications are in the Plan. The application kit, including the Plan and application forms, is available from the Criminal Justice Division, Office of the Governor and on the Governor's web site at www.governor.state.tx.us.

Contact person: If additional information is needed contact CJD at (512) 463-1919.

Closing Date for Receipt of Applications: The original and five copies of the application for statewide projects must be received at or hand delivered to CJD by March 1, 1999. Applications may be delivered to 1100 San Jacinto, Austin, Texas, 78701, or mailed to Post Office Box 12428, Austin, Texas, 78711, Attention: Planning and Grant Administration.

Selection Process: All applications will be reviewed for eligibility and rated competitively according to funding source by a committee selected by the director of CJD. The Governor or his designee will make all final funding decisions.

TRD-9815863
Pete Wassdorf
Deputy General Counsel
Office of the Governor
Filed: October 9, 1998

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Texas Department of Housing and Community Affairs

Notice of Public Hearing

The Texas Department of Housing and Community Affairs (TDHCA) announces that a public hearing will be held to receive comments on the temporary assignment of Lubbock County's Texas Weatherization Assistance Programs for Low-Income Persons.

The public hearing will be held at 1:30 p.m. on Friday, November 13, 1998 in the George Mahon Library, 2nd Floor Conference Room located at 1306 9th Street, Lubbock, Texas. At the hearing, a representative from TDHCA will provide information regarding the proposed contractor that will provide services under the Texas Weatherization Assistance Programs for Low-Income Persons (WAP). The Lubbock County WAP program will ultimately undergo the Request for Proposal process.

Local officials and citizens are encouraged to participate in the hearing process. Written and oral comments received will be used to finalize the temporary county assignment. Written comments from those who cannot attend the hearing in person may be provided by the close of business at 5:00 p.m. on November 18, 1998 to Ms. Nieves Lopez, Senior Planner, Energy Assistance Section, Texas Department of Housing and Community Affairs, 507 Sabine, Suite 600, Austin, Texas, 78701 or by electronic mail to nlopez@tdhca.state.tx.us or by fax to (512) 475-3935. A copy of the proposed contract assignment may be requested by calling Ms. Nieves Lopez at (512) 475-1435 or by electronic mail or fax at address numbers given above.

Individuals who require auxiliary aids or services for this meeting should contact Ms. Gina Arenas, 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.

TRD-9816095
Daisy Stiner

Acting Executive Director
Texas Department of Housing and Community Affairs
Filed: October 14, 1998

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Texas Department of Human Services

Requests for Proposals

Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals from providers for the delivery of case management services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the Department, a case management agency must be selected in the RFP process, be enrolled as a CLASS provider, and attend and complete mandatory CLASS provider agency training.

Purpose: The purpose of this RFP is to meet the Department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

Description of Services: A case management agency enrolls participants in the CLASS program and is the focal point for developing service plans, coordinating services, and tracking participant progress. The case manager convenes the interdisciplinary team (IDT) that is responsible for developing the plan of care and assures that services are consistent with the needs and preferences of the individual participant. Case managers further assist in the identification and development of appropriate community resources, crisis intervention, advocacy, and safeguarding individual rights. The case manager works in a cooperative relationship with the direct services agency which delivers home and community-based services.

Geographic Area: The department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: 63 individuals in the Beaumont area (Jefferson/Orange/Chambers/Hardin/Liberty counties).

Closing Date and Time: Proposals must be received by the Department by 5:00 p.m. on Friday, February 12, 1999.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Administrative Technician, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, Texas, 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas, 78714-9030. You may call Jessie Hood at (512) 438-5658 or fax a request to (512) 438-5133. The RFP packet will be available on Monday, October 26, 1998. This announcement may also be viewed on the Internet in the Electronic State Business Daily at the following address: <http://www.marketplace.state.tx.us/1380/>.

Bidder's Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS by 5:00 p.m. on Friday, January 8, 1999.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9815894
Glenn Scott
Agency Liason
Texas Department of Human Services
Filed: October 9, 1998

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Request for Proposal (RFP): The Texas Department of Human Services (TDHS) is requesting proposals (RFP) from providers for the delivery of Medicaid home and community-based services provided through the Community Living Assistance and Support Services (CLASS) program. To be eligible to contract with the Department, a direct services agency must be licensed by the Texas Department of Health as a home and community support services (HCSS) agency under the categories of licensed home health and personal assistance services, be selected in the RFP process, be enrolled and certified as a CLASS provider, and complete mandatory CLASS provider agency training.

Purpose: The purpose of this RFP is to meet the department's requirements for periodic re-procurement of CLASS providers and to offer participants a choice of providers.

Description of Services: The direct services agency is responsible for delivering the following services in accordance with the individual service plan: personal care and habilitation services, nursing services, physical therapy, occupational therapy and speech pathology services, respite, psychological services, adaptive aids and minor home modifications. CLASS participants are also eligible for the full range of Medicaid benefits. Direct services agency representatives participate in the assessment and care planning functions of the interdisciplinary team and work in a cooperative relationship with the case management agencies.

Geographic Area: The Department intends to contract for the delivery of CLASS services to the following number of individuals in the following service areas/counties: 63 individuals in the Beaumont area (Jefferson/Orange/Chambers/Hardin/Liberty counties).

Closing Date and Time: Proposals must be received by the Department by 5:00 p.m. on Friday, February 12, 1999.

Contact Person for RFP: To obtain a Request for Proposal packet, please write Jessie Hood, Administrative Technician, CLASS Program, Texas Department of Human Services, 701 W. 51st Street (Mail Code W-521, Austin, Texas, 78751), P.O. Box 149030, Mail Code W-521, Austin, Texas, 78714-9030. You may call Jessie Hood at (512) 438-5658 or fax a request to (512) 438-5133. The RFP packet will be available on Monday, October 26, 1998. This announcement may also be viewed on the Internet in the Electronic State Business Daily at the following address: <http://www.marketplace.state.tx.us/1380/>.

Bidders' Questions/Inquiries: Bidders must submit questions pertaining to the RFP and/or the CLASS program, in writing, to TDHS to the attention of Jessie Hood at the address or fax number above. All questions must be received by TDHS by 5:00 p.m. on Friday, January 8, 1999.

Historically underutilized businesses, public or private profit, with demonstrated knowledge, competence and qualifications in performing these services are encouraged to apply.

TRD-9815895
Glenn Scott
Agency Liaison
Texas Department of Human Services
Filed: October 9, 1998

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Inaugural Endowment Fund Committee

Fund Disbursement Report

Under the provisions of the Texas Government Code §401.011(f), the Inaugural Endowment Fund Committee filed with the Secretary of State on October 1, 1998, a report detailing expenditures made during the 12 months ending on September 1, 1998.

The report includes copies of reports submitted by the recipients of grants from the Fund. Reports have been filed by the State Preservation Board as well as by the ten libraries receiving grants in October 1997. Also, reports were filed by libraries which had previously been awarded grants but that had not expended the funds by the last reporting date of September 1, 1997. The amount of \$14,122 awarded to the Texas Historical Commission on October 22, 1997, was not disbursed, because other funding for the project was found.

Disbursements from the fund included grants to the State Preservation Board, \$200,000; the State Preservation Board, \$50,000; the Texas Historical Commission, \$55,600; Cleburne Public Library, \$2,880; Cross Plains Public Library, \$1,816.64; Jeff Davis County Library, \$3,023.68; Haltom City Public Library; \$3,000; Johnson City Library, \$2,733.44; Joshua School & Public Library, \$3,000; Leander Public Library, \$2,857.80; Lumberton Public Library, \$994.60; Sabinal Public Library, \$3,000; City-County Library in Tahoka, \$1,901.32; Abernathy Public Library, \$1,391.06; Crosby County Library, \$637.90; Crosby County Library, Ralls Branch, \$3,000.58; Crosby County Library, Lorenzo Branch, \$3,000; Springlake Earth Community Library, \$400; Floyd County Library, \$1,268.82; Floyd County Branch Library, \$2,588.10; Friona Public Library, \$3,000; Olton Branch Library, \$2,812; Motley County Library, \$123.96; Cochran County Love Memorial Library, \$3,000; Caprock Library, \$2,814.36; Silvertown Library, \$2,785.48; Dickens County, Spur Public Library, \$0; Swisher County Library, \$549.29; Rowlett Public Library, \$2,609.93; Hillsboro City Library, \$3,000.

Copies of the report documents are available from the Committee or at the Office of the Secretary of State, Statutory Documents Section, 1019 Brazos, Austin, Texas 78701, (512) 463-6182.

TRD-9815970
Clark Kent Ervin
Assistant Secretary of State
Inaugural Endowment Fund Committee
Filed: October 12, 1998

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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 for admission to Texas for UNITED GUARANTY MORTGAGE INDEMNITY COMPANY, a foreign property and casualty company. The home office is located in Greensboro, North Carolina.

Application to change the name of SEGUROS PROBURSA, S.A. to SEGUROS BBV-PROBURSA, S.A. DE C.V., a Mexican casualty insurance company. The home office is located in Mexico City, Mexico.

Application to change the name of HMO TEXAS, L.C. to TEXAS HEALTH CHOICE, L.C., a domestic HMO. The home office is located in Houston, Texas.

Application to change the name of LIFE INSURANCE COMPANY OF VIRGINIA to GE LIFE AND ANNUITY ASSURANCE COM-

PANY, a foreign life company. The home office is located in Richmond, Virginia.

Any objections must be filed within 20 days after this notice was filed with the Texas Department of Insurance, addressed to the attention of Kathy Wilcox, 333 Guadalupe Street, M/C 305-2C, Austin, Texas, 78701.

TRD-9816082
Bernice Ross
Deputy Chief Clerk
Texas Department of Insurance
Filed: October 14, 1998

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Texas Natural Resource Conservation Commission

Deadline for Written Comments

The Texas Natural Resource Conservation Commission (TNRCC) has corrected its deadline to receive written comments for proposed changes to Chapters 50, 288, 293, 294, 295, and 297 relating to Water Quality Protection Zones.

The proposal was published in the October 9, 1998 issue of the *Texas Register*. The deadline for receipt of written comments to the proposed changes was originally published as November 2, 1998, but is actually November 9, 1998.

For further information please contact Lutrecia Oshoko, TNRCC, P.O. Box 13087, Austin, Texas, 78711-3087, 512/239-4640.

TRD-9815648
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 7, 1998

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Notice of Application for Amendment to Certificate of Adjudication Pursuant to Texas Water Code Section 11.122 Requiring Notice to Interjacent Appropriators

O. P. Leonard, Jr. and Nancy Leonard, applicants. Notice was mailed October 14, 1998 on Application No. 14-2563A to amend Certificate of Adjudication No. 14-2563 by moving a 173 acre-foot portion of the authorized water rights approximately .25 mile upstream. The new diversion point will be in San Saba County. The water will be used to irrigate 347 acres of land out of a 410.71 acre tract of land in San Saba County, Texas. Applicants also seek to move a 4.11 cfs (1846 gallons per minute) portion of the diversion rate to the upstream point. The following water right Certificates of Adjudication are located between the existing and proposed diversion points, and notice of this application has been mailed to the certificate holders via certified mail: 14-2556, 14-2557, 14-2558, 14-2559, 14-2560, 14-2561, and 14-2562. The applicants, O.P. and Nancy Leonard, will retain the existing priority date, except they will be junior in priority to the above interjacent water right holders.

The Executive Director may issue an amendment to the Certificate of Adjudication on or after November 13, 1998, unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC on or before November 5, 1998. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the permit

number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not issue the permit and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, TEXAS, 78711-3087. Written public comments may also be submitted to the Chief Clerk's Office on or before November 5, 1998. For information concerning technical aspects of the permit, contact Kellye Rila, MC 160, at the same above P.O. Box address. For information concerning hearing procedures or citizen participation, contact the Public Interest Counsel, MC 103, at the same P.O. Box address. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9816088
LaDonna Castanuela
Acting Chief Clerk
Texas Natural Resource Conservation Commission
Filed: October 14, 1998

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Notice of Application to Appropriate Public Waters of the State of Texas

The following notice of application for a permit to appropriate Public Waters of the State of Texas was issued on October 7, 1998.

Application No. 5617; WOERNER LAND CORPORATION, Route 1, Box 143, Arthur City, Texas, 75411, applicant, seeks a permit pursuant to §11.121, Texas Water Code, and Texas Natural Resource Conservation Commission (TNRCC) Rules 30 TAC §295.1, et seq. to maintain an off-channel reservoir and to divert not to exceed 3,260.80 acre-feet of water per year from the Red River, Red River Basin at a maximum rate of 3,000 gallons per minute (6.68 cubic feet per second) to the reservoir for subsequent irrigation or to the fields for irrigation of 1,725 acres of land out of 10 tracts totaling 2,723.169 acres in Lamar County, Texas, approximately 18 miles north-northwest of Paris. The applicant is requesting authorization to divert water from any point on the right, or west, bank of the reach of the river adjacent to the applicant's property.

The Executive Director may approve this application unless a written hearing request is filed in the Chief Clerk's Office of the TNRCC within 30 days after newspaper publication of the notice of application. To request a hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the applicant and the application number; (3) the statement "I/we request a public hearing;" (4) a brief description of how you would be adversely affected by the granting of the application in a way not common to the general public; and (5) the location of your property relative to the applicant's operations.

If a hearing request is filed, the Executive Director will not approve the application and will forward the application and hearing request to the TNRCC Commissioners for their consideration at a scheduled

Commission meeting. If a hearing is held, it will be a legal proceeding similar to civil trials in state district court.

Requests for a public hearing must be submitted in writing to the Chief Clerk's Office, MC 105, TNRCC, P.O. Box 13087, Austin, Texas, 78711-3087. Individual members of the public who wish to inquire about the information contained in this notice, or to inquire about other agency permit applications or permitting processes, should call the TNRCC Office of Public Assistance, Toll Free, at 1-800-687-4040.

TRD-9816089

LaDonna Castanuela

Acting Chief Clerk

Texas Natural Resource Conservation Commission

Filed: October 14, 1998



Proposal for Decision

The State Office Administrative Hearing has issued Proposal for Decision and Order to the Texas Natural Resource Conservation Commission on October 7, 1998 on Petitioner vs. Trevor Boyce Associates, Inc. Respondent; SOAH Docket No. 582-97-1708; TNRCC Docket No. 97-0058-AIR-E. This posting is Notice of Opportunity to comment on Proposal for Decision and Order. Comment period will end 30 days from date of publication.

TRD-9816087

Douglas A. Kitts

Agenda Coordinator

Texas Natural Resource Conservation Commission

Filed: October 14, 1998



Public Meeting Notice

The next meeting of the Waste Reduction Advisory Committee is scheduled for 9:00 a.m. on Wednesday, October 28, 1998, at the Texas Natural Resource Conservation Commission (TNRCC) headquarters, located at 12100 Park 35 Circle, Building F, Room 5108. A public comment period will be available. Items to be discussed include: approval of the July meeting minutes, results from Pollution Prevention Week, the Office of Pollution Prevention and Recycling's Workplan, TNRCC compliance assistance activities, legislative update, environmental education report, the Consolidated Uniform Report for the Environment, and TNRCC program updates. For additional information, contact Mr. Ken Zarker of the Office of Pollution Prevention and Recycling at (512) 239-3145 or email kzarker@tnrcc.state.tx.us for a copy of the draft agenda.

TRD-9816080

Margaret Hoffman

Director, Environmental Law Division

Texas Natural Resource Conservation Commission

Filed: October 14, 1998



Public Notice

The executive director of the Texas Natural Resource Conservation Commission (TNRCC) by this notice is issuing a public notice of intent to delete a facility from the state registry (state Superfund list) of sites which may constitute an imminent and substantial endangerment to public health and safety or the environment due

to a release or threatened release of hazardous substances into the environment.

The site proposed for deletion is the Houston Lead state Superfund site that was originally placed on the state Superfund list in November, 1987. The site is located in southeast Houston at 300 Holmes Road, in a non-residential section of the city.

In 1988, the U.S. Environmental protection Agency conducted an investigation of surface and subsurface soils to a depth of 10 feet below ground surface. Again, in 1994, EPA evaluated the site, sampled surface water, groundwater and ambient air, and evaluated migration pathways and potential environmental receptors.

In March 1994, following the repeat evaluation, EPA re-designated the site as NFRAP (No Further Remedial Action Planned) as far as federal Superfund action was concerned.

While the site remained on the state Superfund registry, it was accepted into the state voluntary cleanup program on May 23, 1996 under §333.5 of the Texas Administrative Code following repayment to the TNRCC of all Superfund administrative costs.

From May 1996 to April 1998, Houston Lead performed the equivalents of a remedial investigation, baseline risk assessment and feasibility study. The remedial investigation indicated that metals contamination (lead, cadmium, and arsenic) existed at the site at levels which might threaten human health and the environment.

The baseline risk assessment concluded that further action was needed to eliminate an imminent and substantial endangerment to human health and the environment.

The feasibility study for the Houston Lead site was completed utilizing the TNRCC's Presumptive Remedies Guidance Document for Soils at State Superfund Sites (RG-277, April 1997). The results of the feasibility study indicated that containment of the impacted soils with groundwater monitoring as the preferred remedy for this site.

A public meeting was held on August 18, 1998 to receive comments on the proposed remedy. No comments were received that would change the proposed remedy.

The executive director has determined that this site has been accepted under the voluntary cleanup program and is therefore eligible for deletion from the list of sites proposed for the state Superfund registry in accordance with 30 TAC §335.344(c)(5).

In accordance with 30 TAC §335.344(b), the TNRCC shall hold a public meeting to receive comment on this intended deletion. This meeting is not considered a contested case hearing within the meaning of Texas Government Code, Chapter 2001. This meeting shall be held upon initiation by the executive director or by requests filed with the executive director before 5:00 p.m., November 23, 1998.

At least 30 days prior to the date set for the meeting, notice shall be provided by first class mail to all Potentially Responsible Parties, and by publication in a newspaper of general circulation in the county where the facility is located. The person submitting the request shall bear the cost of the publication of the notice. The executive director does not intend to initiate a public meeting.

If a public meeting challenging this determination of eligibility for deletion by the executive director is not requested by a Potentially Responsible Party or any interested person(s) before the designated date, the Houston Lead state Superfund site will be deleted from the state Superfund registry.

All inquiries regarding the Houston Lead state Superfund site or requests for a public meeting should be directed to Dean Perkins, TNRCC, Remediation Division. MC-143, P.O. Box 13087, Austin, Texas, 78711-3087; telephone (800) 633-9363 (within Texas only) or (512) 239-2482. A portion of the record for this site, including documents pertinent to the executive director's determination, is available for review during regular business hours at the Meyer Branch Library, 5005 W. Bellfort, Houston, Texas, 77035, telephone (713) 723-1630. Copies of the complete public file may be obtained during regular business hours at the TNRCC, Central Records, Building D, North Entrance, Room 190, 12100 Park 35 Circle, Austin, Texas, 78753, telephone (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee.

TRD-9816081
Margaret Hoffman
Director, Environmental Law Division
Texas Natural Resource Conservation Commission
Filed: October 14, 1998



Public Utility Commission of Texas

Applications to Introduce New or Modified Rates or Terms Pursuant to P.U.C. Substantive Rule §23.25

Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 7, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Notification of Southwestern Bell Telephone Company (SWBT) to Institute Promotional Rates for Remote Access to Call Forwarding Service pursuant to Substantive Rule §23.25. Tariff Control Number 19952.

The Application: SWBT has filed an application to institute promotional rates for business customers in Texas, who subscribe to Remote Access to Call Forwarding service between November 1, 1998 and December 31, 1998. During the promotional period, new business subscribers of Remote Access to Call Forwarding service will receive a waiver of the \$5.40 installation charge. Eligible customers are those who do not already subscribe to Remote Access to Call Forwarding service. There are no retention requirements associated with this offer. SWBT requests an effective date of November 1, 1998.

Persons who wish to intervene in this proceeding 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 October 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9815901
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 7, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule

§23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Notification of Southwestern Bell Telephone Company (SWBT) to Implement a Non-rate Affecting Change to the Current Terms Concerning the Number of Digital Transmission Loop Arrangements Pursuant to Substantive Rule §23.25. Tariff Control Number 19954.

The Application: SWBT has filed an application to implement a non-rate affecting change to the current terms concerning the number of Digital Transmission Loop Arrangements (DTLA) that customers must order to qualify for Customer Specific Pricing (CSP). The current number of DTLAs that customers must order to qualify for CSP is 15. SWBT proposes under this application to lower the requirement to 5 DTLAs. This change is being made to provide more customers with the opportunity to receive the benefits of CSP treatment. SWBT requests an effective date of November 2, 1998.

Persons who wish to intervene in this proceeding 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 October 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9815902
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 1998



Notice is given to the public of an application filed with the Public Utility Commission of Texas on October 8, 1998 to introduce new or modified rates or terms pursuant to P.U.C. Substantive Rule §23.25, *Procedures Applicable to Chapter 58-Electing Incumbent Local Exchange Companies (ILECs)*.

Tariff Title and Number: Notification of Southwestern Bell Telephone Company (SWBT) to Institute Promotional Rates for THE WORKS, The BASICS, or Caller ID Value Package Plus (CVP+) Services Pursuant to Substantive Rule §23.25. Tariff Control Number 19964.

The Application: SWBT is instituting promotional rates for residence customers in Texas, who subscribe to THE WORKS, The BASICS, or CVP+ services between November 2, 1998 and November 28, 1998. During the promotional period, new residence subscribers of THE WORKS, The BASICS, or CVP+ will receive a waiver of installation charges and a one-time monthly credit of \$9.95. Eligible customers are those who do not currently subscribe to one of these packages. There are no retention requirements associated with this offer.

Persons who wish to intervene in this proceeding 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 October 30, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9815976
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



Notice of and Request for Comments in Commission Inquiry Regarding Compliance with Competitive Safeguards by Incumbent Local Exchange Carriers

The Public Utility Commission of Texas (commission) has established an inquiry, designated as Project Number 18377, regarding compliance with competitive safeguards by incumbent local exchange carriers (ILECs) serving greater than 31,000 access lines and fewer than 5,000,000 access lines. The ILECs must comply with competitive safeguards set forth in the Public Utility Regulatory Act (PURA), Texas Utilities Code, Chapter 60, as well as with the federal Telecommunications Act of 1996, codified at 47 U.S.C. §251 *et seq.* (FTA). The commission inquiry seeks to determine the existing level of competition in areas served by the ILECs and whether competitive safeguards are effectively eliminating barriers to competition in these areas. The ILECs subject to review are: Sugar Land Telephone Company; Central Telephone Company of Texas (Centel); Century Telephone of Lake Dallas, Inc.; Century Telephone of Port Aransas, Inc.; Century Telephone of San Marcos, Inc.; Contel of Texas, Inc. (formerly Continental Telephone Company of Texas); GTE Southwest, Inc.; Lufkin-Conroe Telephone Exchange, Inc.; United Telephone Company of Texas, Inc.; Texas Alltel; and any affiliates of these companies that hold a certificate of convenience and necessity (CCN) to provide telephone service within the state.

Questions have been filed with the commission's Central Records under Project Number 18377 for which it seeks written public comment by interested persons regarding compliance with competitive safeguards (responses may include specific information regarding one or more ILECs subject to the inquiry). Interested persons may obtain a copy of the questions by contacting Central Records, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. Written comments to the questions (16 copies) should be submitted to the Filing Clerk at the same address and should refer to Project Number 18377. Comments should be filed no later than November 13, 1998. ILECs subject to the inquiry may file reply comments no later than December 11, 1998.

If you have any questions in regards to this notice or the questions for comment, please call Ms. Orlesia Duren at (512) 936-7294.

TRD-9816023

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 13, 1998



Notice of Application Filed for Designation as an Eligible Telecommunications Carrier Under 47 U.S.C. §214(e)

Notice is given to the public an application filed with the Public Utility Commission of Texas on September 14, 1998 for designation as an eligible telecommunications carrier under 47 U.S.C. §214(e).

Project Title and Number: Application of Western Wireless Corporation Seeking Eligible Telecommunications Carrier Designation Pursuant to 47 U.S.C. §214(e). Project Number 19847.

The Application: Western Wireless Corporation (Western Wireless), on behalf of its subsidiaries holding radio licenses in Texas, filed an application with the Public Utility Commission of Texas for the purpose of being designated an eligible telecommunications carrier (ETC) in accordance with 47 U.S.C. §214(e). Pursuant to 47 U.S.C. §214(e), ETC designation is required before a carrier can receive federal universal service fund (USF) support. These funds are

intended to assist Western Wireless in providing services in certain areas of Texas. The proposed effective date is January 1, 1999.

Western Wireless provides cellular service in rural and urban areas in western Texas. Western Wireless has requested ETC eligibility for USF support in the "non-rural" service areas. The service areas include: Andrews, Archer, Armstrong, Bailey, Baylor, Blanco, Borden, Brewster, Briscoe, Burnet, Callahan, Carson, Castro, Childress, Cochran, Coke, Collingsworth, Concho, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Donley, Ector, Fisher, Foard, Gaines Garza, Gillespie, Glasscock, Gray, Hale, Hall, Hansford, Hardeman, Hartley, Haskell, Hemphill, Hockley, Howard, Hudspeth, Hutchinson, Irion, Jeff Davis, Jones, Kendall, Kent, Kerr, Kimble, King, Knox, Lamb, Lampasas, Llano, Lubbock, Lynn, Martin, Mason, McCulloch, Menard, Midland, Mitchell, Motley, Moore, Nolan, Ochilree, Oldham, Parmer, Pecos, Presidio, Reagan, Reeves, Roberts, San Saba, Schleicher, Scurry, Shackelford, Sherman, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Ward, Wheeler, Wilbarger, Winkler, Yoakum, and Young counties.

Western Wireless requests a waiver of the requirement to provide the federally supported services throughout the study area of the rural telephone company. Because Western Wireless may not hold the license to provide the federally supported services throughout the study, it seeks to provide such services in those rural telephone company exchanges in which it is authorized to service.

Persons who wish to comment on this application should notify the Public Utility Commission of Texas by November 5, 1998. Requests for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas, 78711-3326, or you may call the Public Utility 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 (800) 735-2989 to reach the commission's toll free number (888) 782-8477.

TRD-9815978

Rhonda Dempsey

Rules Coordinator

Public Utility Commission of Texas

Filed: October 12, 1998



Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On October 7, 1998, WinStar Wireless of Texas, Inc., filed an application with the Public Utility Commission of Texas (PUC) to amend its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60027. Applicant intends to amend its SPCOA to reflect the assignment of its SPCOA to a non-certificated entity, WinStar Wireless, Inc.

The Application: Application of WinStar Wireless of Texas, Inc., for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 19948.

Persons with questions about this docket, or who wish to intervene or otherwise participate in these proceedings should make appropriate filings or comments to the commission at the Public Utility Commission of Texas, at P.O. Box 13326, Austin, Texas, 78711-3326 no later than October 28, 1998. You may contact the PUC Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19948.

TRD-9815899
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 1998



Notices of Applications for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 7, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of Communication Systems Development, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19957 before the Public Utility Commission of Texas.

Applicant intends to provide local exchange, basic local exchange or switched access service by utilizing its own facilities or that or another certificated local exchange provider or through resale of the incumbent local exchange carriers services.

Applicant's requested SPCOA geographic area includes the entire state of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, 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 October 28, 1998. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9815900
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 9, 1998



Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on October 8, 1998, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.154-54.159 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of State Communications, Inc., for a Service Provider Certificate of Operating Authority, Docket Number 19960 before the Public Utility Commission of Texas.

Applicant intends to provide basic residential exchange services, residential custom and CLASS features, basic business exchange services, business custom calling and CLASS features, adjunct provided features, and business and residential ancillary services.

Applicant's requested SPCOA geographic area includes the area currently served by Southwestern Bell Telephone Company and GTE-Southwest, Inc., and the exchange area of any other local exchange company (LEC) that is not now, or ceases to be, subject to competitive protection as a small or rural LEC pursuant to 48 U.S.C. §251(f).

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 October 28, 1998. Hearing

and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9816025
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 13, 1998



Notice of Intent to File Pursuant to P.U.C. Substantive Rule §23.27

Notice is given to the public of the intent to file with the Public Utility Commission of Texas an application pursuant to P.U.C. Substantive Rule §23.27 for a new PLEXAR-Custom service for Texas Higher Education Coordinating Board in Austin, Texas.

Tariff Title and Number: Southwestern Bell Telephone Company's (SWBT) Notice of Intent to File a New PLEXAR-Custom Service for Texas Higher Education Coordinating Board in Austin, Texas, Pursuant to P.U.C. Substantive Rule §23.27. Tariff Control Number 19966.

The Application: Southwestern Bell Telephone Company is requesting approval for a new PLEXAR-Custom service for Texas Higher Education Coordinating Board in Austin, Texas. PLEXAR-Custom service is a central office-based PBX-type serving arrangement designed to meet the specific needs of customers who have communication system requirements of 75 or more station lines. The designated exchange for this service is the Austin exchange, and the geographic market for this specific PLEXAR-Custom service is the Austin LATA.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or call the commission's Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136.

TRD-9815977
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



Public Notices of Amendments to Interconnection Agreements

On October 7, 1998, Southwestern Bell Telephone Company and Galveston Cellular Telephone Company, collectively referred to as applicants, filed a joint application for approval of amendments to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19951. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendments to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19951. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 4, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19951.

TRD-9815972
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



On October 7, 1998, Southwestern Bell Telephone Company and Houston Cellular Telephone Company, collectively referred to as applicants, filed a joint application for approval of amendments to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19953. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendments to the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19953. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 4, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19953.

TRD-9815971
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



Public Notices of Interconnection Agreement

On September 30, 1998, Lufkin-Conroe Telephone Exchange, Inc. and ATS Telecommunications Systems, Inc., collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19916. The joint application and

the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19916. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 5, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19916.

TRD-9815974
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas

Filed: October 12, 1998

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On October 2, 1998, United Telephone Company of Texas, Inc. doing business as Sprint, Central Telephone Company of Texas doing business as Sprint (collectively, Sprint) and Quicktel, collectively referred to as applicants, filed a joint application for approval of an interconnection agreement under the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19936. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The FTA authorizes the commission to review and approve any interconnection agreement adopted by negotiation of the parties. Pursuant to FTA §252(e)(2) the commission may reject any agreement if it finds that the agreement discriminates against a telecommunications carrier not a party to the agreement, or that implementation of the agreement, or any portion thereof, is not consistent with the public interest, convenience, and necessity. Additionally, under FTA §252(e)(3), the commission may establish or enforce other requirements of state law in its review of the agreement, including requiring compliance with intrastate telecommunications service quality standards or requirements. The commission must act to approve the agreement within 90 days after it is submitted by the parties. The parties have requested expedited review of this application.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19936. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 5, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this docket or who wish to comment on the application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19936.

TRD-9815975
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



On October 6, 1998, Southwestern Bell Telephone Company and Local Telecom Services, L.L.C., collectively referred to as applicants, filed a joint application for approval of an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated §§11.001-63.063 (Vernon 1998) (PURA). The joint application has been designated Docket Number 19946. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing 13 copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 19946. As a part of the comments, an interested person may request that a public hearing be conducted. The comments, including any request for public hearing, shall be filed by November 4, 1998, and shall include:

- 1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;
- 2) specific allegations that the agreement, or some portion thereof:
 - a) discriminates against a telecommunications carrier that is not a party to the agreement; or
 - b) is not consistent with the public interest, convenience, and necessity; or
 - c) is not consistent with other requirements of state law; and
- 3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this project or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326. You may call the Public Utility Commission Office of Customer Protection at (512) 936-7120. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 19946.

TRD-9815973
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 12, 1998



Request for Comments Concerning Area Code Relief Planning and Implementation

The Public Utility Commission of Texas (commission) has opened Project Number 19698, concerning area code relief planning and implementation. Within the telecommunications industry, area codes are also referred to as Numbering Plan Areas (NPAs). Before publication of a proposed rule, the commission seeks input from interested parties on the need for and scope of a rule establishing guidelines for NPA relief planning and implementation. The commission requests interested parties to submit comments on the following questions within 30 days of publication of this notice. All comments on the following questions should be filed with the Filing Clerk, Public Utility Commission of Texas, 1701 N. Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 and reference Project Number 19698. After review of the responses to these questions, the commission will determine whether to publish a proposed rule on NPA relief planning.

1. Should the commission adopt a rule regarding NPA relief planning and implementation guidelines?
2. If the answer to question number one is yes, should the rule attempt to codify the existing NPA relief planning process or should a different process be used?
3. What should the role of the commission be in NPA relief planning and implementation?
4. What are the standards, including public interest considerations (i.e., disruption to the smallest number of customers, etc.), that should be used for NPA relief planning and implementation?
5. When should NPA relief planning begin (i.e., within a defined period from projected exhaust?)
6. Should number conservation measures be considered either before or in conjunction with an NPA relief plan? If so, what specific number conservation measures should be considered?
7. Should the commission continue to conduct periodic number utilization studies of service providers as a way of monitoring the need for NPA relief?
8. What specific customer education should be provided for each type (i.e., split and overlay) of NPA relief plan?
9. Who should implement customer education plans?
10. How should customer education plans be funded?
11. Have any other states adopted rules/processes for NPA relief planning and implementation?

a. If so, please provide copies of such rules/processes and/or citations to same.

b. Should any of these rules/processes be used for NPA relief planning and implementation in Texas?

If you have any questions in regards to this notice, contact Tom Hunter, Assistant General Counsel, Office of Regulatory Affairs, (512) 936-7280.

TRD-9816024
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 13, 1998



Request for Comments on Revised Hub Reporting Forms

With an effective date of September 8, 1998, the Public Utility Commission of Texas (commission) has adopted new Substantive Rule §25.80 relating to Annual Report on Historically Underutilized Businesses (HUBs) for electric service providers (23 TexReg 9310), and §26.80 relating to Annual Report on Historically Underutilized Businesses for telecommunications service providers (23 TexReg 9322). The adoption of these sections make it necessary to amend the current forms for reporting required information on HUBs.

Project Number 19910-Forms for Reporting Required Information on Historically Underutilized Businesses has been initiated to amend the HUB reporting forms. Copies of the proposed forms may be obtained at the commission's Central Records, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas, 78711-3326 under Project Number 19910. Any persons wishing to comment on the proposed forms should file comments with the commission's Central Records within 30 days of publication of this notice. All comments should reference Project Number 19910.

Persons with questions regarding this notice may contact Michael Etchison, Office of Regulatory Affairs-Legal Division at (512) 936-7271.

TRD-9816022
Rhonda Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: October 13, 1998



Texas Department of Transportation

Notice of Contract Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation (TxDOT) publishes this notice of consultant contract award. The request for proposals appeared in Volume 23, No. 27, *Texas Register*, July 3, 1998 (23 TexReg 7142). The contract authorizes a study that compares the cost for highway design work performed by TxDOT employees to that performed by consultant engineers. The consultant will collect and tabulate data and submit a written report documenting the findings along with recommendations for TxDOT consideration. The selected consultant is PricewaterhouseCoopers, LLP, 600 Congress Avenue, Suite 1800, Austin, Texas, 78701. The total value of the contract is \$199,870. The contract period began October 9, 1998, and ends on February 19, 1999. The final report is to be submitted on or before January 15, 1999.

TRD-9816058
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: October 14, 1998



Texas Workforce Commission

Notice

Pursuant to Chapter 552.001 *et seq.*, Mike Sheridan, Executive Director of the Texas Workforce Commission has designated James Nolan, Senior Attorney-Information Release, as the recipient of all public information requests which come to the Texas Workforce Commission.

Requests for public information shall be sent in the following manner:

In writing to: James Nolan, Texas Workforce Commission, 101 East 15th Street, Room 264, Austin, Texas, 78778-0001.

By facsimile: (512) 463-2990.

By electronic mail: openrecords@twc.state.tx.us.

The website posting can be accessed from the TWC homepage at: <http://www.twc.state.tx.us>.

TRD-9815938
J. Randel (Jerry) Hill
General Counsel
Texas Workforce Commission
Filed: October 12, 1998



Notice of Contract Award

The Texas Workforce Commission files this notice of the award of a consulting services contract, effective September 1, 1998, to Angelou Economic Advisors, Inc., under the provisions of the Government Code, Chapter 2254.

The award was made pursuant to a Finding of Fact from the Governor's Office of Budget and Planning, dated December 16, 1997, and in response to a Request for Proposals issued by the Texas Workforce Commission on December 5, 1997, as published in the December 5, 1997, issue of the *Texas Register* (22 TexReg 12186).

Angelou Economic Advisors, Inc., whose business address is 111 Congress Avenue, Suite 1200, Austin, Texas, 78701, will provide an analysis of state and local business community needs for workforce resources and will develop methods to enhance the involvement of local business communities in the workforce development system. The services shall include the following elements:

a detailed analysis of the statewide and local business community needs for workforce resources, and shall recommend methods on how to best connect public workforce services with those identified needs.

a written description of specific statewide or local improvements to existing systems that would increase the responsiveness of public workforce services to business community resource needs.

an analysis of the current extent of business community involvement in the public workforce system and their satisfaction level with that involvement.

a system for the business community to provide direct and continual input on statewide and local workforce development issues.

recommend systems for disseminating information to the business community to inform employers about recent workforce reform efforts, how these changes affect them, and how they can successfully benefit from the changes.

a plan to mobilize business involvement in school-to-work and welfare-to-work initiatives.

The total value of the award is \$250,000 with a beginning contract date of September 1, 1998 and an ending date of December 31, 1998.

Angelou Economic Advisors, Inc. Consultants will complete the required review and analysis and will develop and recommend a communication system by December 31, 1998.

TRD-9815937

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: October 12, 1998



Request for Proposals

TEXAS CHILD CARE INFORMATION/RESOURCE & REFERRAL GRANT

The Texas Workforce Commission (TWC) invites proposals from established Information and Referral (I&R) and Resource and Referral (R&R) agencies for the Texas Child Care Information Resource & Referral Services Grant (TCCI/R&RG). The purpose of the grant is to allow these organizations to expand their service capability and create innovative approaches to serving working families seeking appropriate quality child care, provide information/access to community resources, and expand the child care provider base.

A. Authorization of Funding

The funds for the TCCI/R&RG are authorized under the FY 1997 Appropriations Bill for the federal Department of Health & Human Services, Child Care Development Fund (CCDF). Funds are subject to the requirements of the Child Care and Development Block Grant Act (CCDBG).

B. Scope of Work

Grant funds must be used to expand I&R and R&R services for working families with child care needs. Applicants must demonstrate a clear need in their community for the project. Activities proposed must explicitly support expanded services to working families with child care needs. Grant activity plans must include at a minimum:

1. Coordinate with the area local Workforce Development Board(s) and the area child care service delivery contractors to assist families currently on the local Child Care Delivery System (CCDS) waiting list to secure other alternate child care and provide those families with community social service linkages through the community information center. Funds can be used to subcontract and pay for a part-time or full-time position with the CCDS contractor to provide services to families on the CCDS wait list.
2. Assist working families not eligible for child care to secure affordable quality child care and provide those families with community social service linkages that will help sustain their participation in the workforce

3. Assist child care providers to enhance their operations by coordinating efforts to obtain provider staff training, facility improvements, child care materials, licensing and/or additional recognized accreditation. Coordinate efforts with the local Workforce Development Board; Early Child Care Development Resources and Child Care Training contractors and/or other agencies in assisting providers resolve deficiencies; improve quality child care services and expansion.

4. Identify areas in need of additional child care providers. Coordinate activities with the Local Workforce Development Board, area business, and other community agencies/governmental entities in attracting providers to fulfill community child care gaps especially care for infants and toddlers.

5. Expand and improve the I&R and R&R computer data base system to collect current comprehensive data on child care providers and community services in the area of jurisdiction for the purpose of assisting working families with their child care and social service needs.

6. Assist working parents by providing consumer education materials and information on quality child care.

C. Eligible Applicants

Applicants submitting proposals for the TCCI/R&RG must order an Application Packet, and meet the following criteria and provide required documentation as requested in the application packet to be considered eligible:

1. Legal entity - for profit, non-profit or public agency in accordance with state/federal regulations.
2. Has a successful history of 2-5 years experience operating I&R and/or R&R services.
3. Information and Referral applicants must be identified as the current recognized community information center (formerly called hubs) as designated by the Texas State Information and Referral Network.

Resource & Referral applicants must be a recognized associate of the Texas Association of Child Care Resource & Referral Agencies.

4. Maintains an up-to-date comprehensive operative computer database of current available resources and public services.

D. Available Funding

TWC plans to make fifty percent (50%) of the awards to organizations that have service areas in Metropolitan Statistical Areas & Composite Counties and 50% to organizations that do not serve any Metropolitan Statistical Areas & Composite Counties based on 1990 Census information.

Definition of a Metropolitan Statistical Area (MSA) - a geographic classification system designating an area comprising a county containing a central city of 590,000 inhabitants or more, plus contiguous counties that are socially and economically integrated with the central city.

Proposals for the TCCI/R&RG may request up to \$46,500. Grant funds will be reimbursed on a monthly cost-reimbursement basis dependent upon satisfactory performance. TWC anticipates awarding up to twelve (12) grants. Up to two (2) grants may be awarded for innovative approaches to serve working families with child care needs and/or improve community child care resources.

E. Funding Restrictions

1. Ninety percent (90%) of grant funds must be used for "direct service" program costs. Administrative costs are limited to ten (10) percent reimbursement under this grant.

2. Recipients must have an accounting system that can track grant revenues and/or expenditures separately to meet State/Federal monitoring requirements. The applicant's most recent audit and/or financial statements must be submitted with the application.

3. Funds must not be used to supplant current CCDBG or Child Care Delivery Services.

F. Matching Funds

Proposals are required to provide 20% local matching funds (direct costs only) for this grant. Matching funds must not be from Federal/State sources that prohibit use of matching and/or any funds that are dedicated to another fund as match. Proposals must identify the source and type of funds dedicated for Match.

G. Length of Contract

The grant period is seventeen (17) months beginning January 15, 1999 or as soon thereafter as contracts can be executed. All contracts will end on May 30, 2000 or before if funds have been expended.

H. Selection, Notification, and Negotiation Process

Proposals will be graded by both the Texas Workforce Commission and outside readers. Grading criteria will be included in the grant applicant packet. The Texas Workforce Commission anticipates completing the selection and notifying applicants of their application status the week of December 14, 1998. The selection process will be based upon proposal scores and geographic location. Negotiations will take place immediately after selection. A designated person, authorized by the selected applicant organization to make budget and/or programmatic decisions, must be readily available to respond to

requested revisions between December 14-31, 1998. If a designated person is not readily available to promptly respond to requested revisions, the grant will not be awarded to the applicant.

Negotiations will be conducted by TWC as deemed necessary. TWC reserves the right to vary all provisions of this RFP prior to the execution of a contract and to execute amendments to contracts when TWC deems such variances and/or amendments are in the best interest of the State of Texas.

I. Due Date and Agency Contact

The deadline for receipt and consideration of the TCCI/R&RG proposal is 4:00 p.m. November 30, 1998. For further information and to order an Application Packet, contact the Grants Staff, Room 416T, 101 E. 15th Street, Austin, Texas, 78778-0001. Phone 512/936-3228, FAX: 512/936-3255.

A list of funded grantees will be published in the Texas Register following contract execution.

J. TWC's Obligations

TWC's obligations under this RFP are contingent upon the actual receipt by the Agency of funds from the US Department of Health and Human Services. If adequate funds are not available to make payments under this grant, TWC shall terminate this RFP and will not be liable for failure to make payments to applicants under this RFP.

TRD-9815936

J. Randel (Jerry) Hill

General Counsel

Texas Workforce Commission

Filed: October 12, 1998

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