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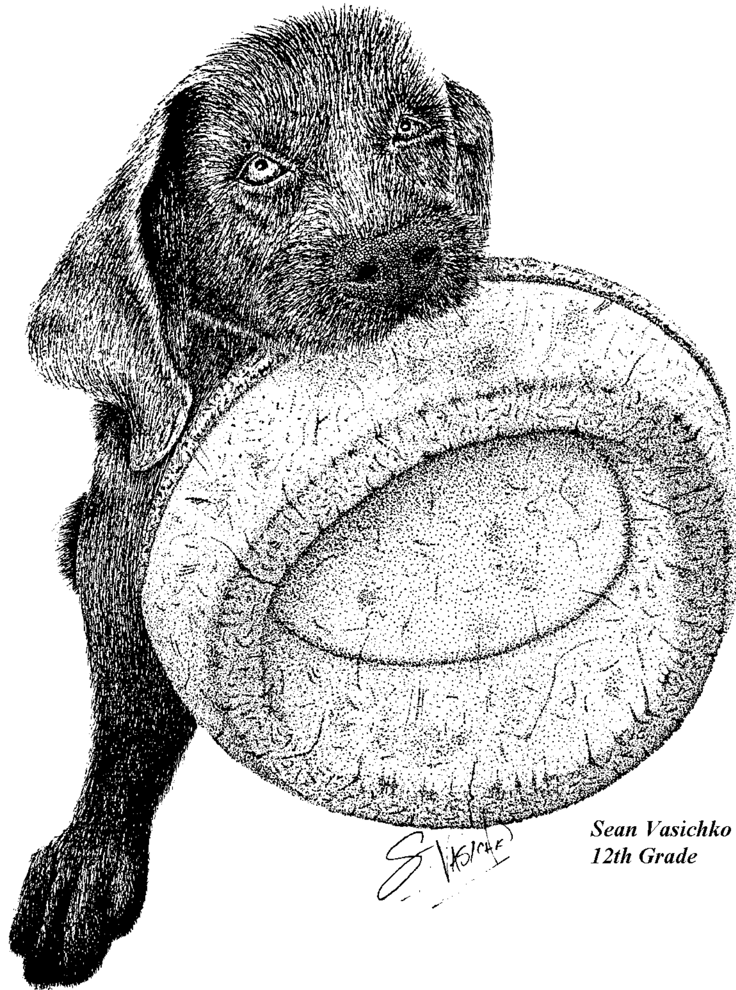

Sean Vasichko
12th Grade

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

Request for Opinion

RQ-0077-GA

Requestors:

The Honorable Tracey Bright

Ector County Attorney

Ector County Courthouse, Room 201

Odessa, Texas 79761

Re: Whether a county commissioner is entitled to access medical insurance coverage information regarding a former commissioner (Request No. 0077-GA)

Briefs requested by August 16, 2003

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

TRD-200304418

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Filed: July 22, 2003

EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034). An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days. (Government Code, §2001.034).

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.13

The General Land Office adopts on an emergency basis new §15.13, concerning Emergency Provisions for the Emergency Stabilization and Repair of Damaged Structures. The General Land Office has identified areas along Texas coast where structures are in need of emergency stabilization and repair.

The section is adopted on an emergency basis due to the imminent peril to public health, safety and welfare caused by high tides and erosion resulting from Hurricane Claudette. As a result of Hurricane Claudette, July 15, 2003, extreme tides and wave action, which greatly exceeded normal levels, caused substantial coastal flooding and erosion. The structural integrity of many homes in Galveston, Brazoria, and Matagorda and other counties has been severely impacted as a result of these natural forces.

Following the landfall of Hurricane Claudette, concerned citizens along the Texas coast requested immediate assistance from the General Land Office. General Land Office staff conferred with local government staff and officials and determined the necessity for an emergency rule which allows emergency stabilization and repair of structures and provides for temporary suspension of the permit and certificate application requirements for these emergency stabilization and repair techniques and methods.

The emergency rule, §15.13, provides procedures and requirements for issuance of authorization to undertake emergency stabilization and repairs of structures impacted by Hurricane Claudette. The rule is applicable to Brazoria, Galveston, and Matagorda Counties. The rule, §15.13(c) provides definitions applicable to this section. Section 15.13(d) allows local governments with beach/dune permitting jurisdiction in the named counties to issue authorizations for emergency stabilization and repair of structures as necessary to eliminate the danger and threat to public health, safety, and welfare. Section 15.13(e) provides that the normal permit process shall not apply to authorizations, and that emergency authorizations are valid for no more than six months from issuance. Section 15.13(f) provides that local governments are required to maintain a written record of the names and addresses of property owners who have been authorized to undertake emergency stabilization and repair actions. They are also required to maintain a written record of the specific activities that have been authorized, including pictures of the structure before and after the repairs are completed. Section 15.13(g) provides requirements and limitations with regard to authorization by local governments of emergency stabilization and repair. Section 15.13(h) provides additional limitations with regard to structures located on the public beach, and requirements related to the placement of beach quality sand. Sections 15.13(i), (j), (k) and (l) provide additional limitations and requirements related to the repair of hard structures and septic and sewage systems, the placement of materials on the public beach, and the removal of beach debris.

The General Land Office has determined that a takings impact assessment (TIA), pursuant to §2007.043 of the Texas Government Code, is not required for the adoption of this emergency because the rule is adopted in response to a real and substantial threat to public health, safety, and welfare. An analysis of the applicability of the exemption from the TIA requirement has been prepared and is available from Ms. Melinda Tracy, Texas Register Liaison, Texas General Land Office, Legal Services Division, P.O. Box 12873, Austin, Texas 78711-2873, facsimile number (512) 463-6311, email address melinda.tracy@glo.state.tx.us.

The new section is adopted on an emergency basis under the Texas Natural Resources Code, §§63.121, 61.011, and 61.015(b), which provide the General Land Office with the authority to: identify and protect critical dune areas; preserve and enhance the public's right to use and have access to and from Texas's public beaches; protect the public easement from erosion or reduction caused by development or other activities on adjacent land; and other measures needed to mitigate for adverse effects on access to public beaches and the beach/dune system. The new section is also adopted pursuant to the Texas Natural Resources Code, §33.601, which provides the General Land Office with the authority to adopt rules on erosion, and the Texas Water Code, §16.321, which provides the General Land Office with the authority to adopt rules on coastal flood protection. Finally, the new section is adopted on an emergency basis pursuant to Texas Government Code §2001.034, which authorizes the adoption of a rule on an emergency basis without prior notice and comment based upon a determination of imminent peril to the public health, safety, or welfare.

§15.13. Definitions and Applicability.

(a) Purpose. The purpose of this section is to allow local governments to grant property owners the ability to immediately undertake emergency stabilization and repair of structures which have been damaged as the result of Hurricane Claudette.

(b) Applicability. This section applies only to structures located in Brazoria, Galveston, and Matagorda Counties. This section shall be in effect for 90 days from the date of filing with the Office of the Secretary of State and may be extended by the Land Commissioner

for additional 30-day periods as necessary to protect public health, safety and welfare.

(c) Definitions. The following words and terms, as used in this section, shall have the following meanings:

(1) The Code--The Texas Natural Resources Code.

(2) Habitable--The condition of the premises which permits the inhabitants to live free of serious threats to health and safety.

(3) House--A single or multi-family structure that serves as living quarters for one or more persons or families.

(4) Emergency repair--Those immediate response actions that must be undertaken to render a structure habitable or to prevent further damage.

(5) Emergency stabilization--Those immediate response actions that must be undertaken to stabilize a structure that is subject to imminent collapse or substantial damage as a result of erosion or undermining caused by waves or currents of water exceeding normally anticipated cyclical levels.

(d) Local government authorization. Local governments with jurisdiction to issue dune protection permits and beachfront construction certificates may, in accordance with this section, authorize emergency stabilization and repair of structures that have been damaged by Hurricane Claudette. All authorizations issued under this section must otherwise be in accordance with applicable state and local law. The local government is responsible for assessing damage to such structures, determining whether the structures are eligible for approval of emergency stabilization and repair, and determining appropriate emergency stabilization and repair procedures. Under this section, local governments may only authorize emergency stabilization and repair as necessary to eliminate the danger and threat to public health, safety, and welfare. Any proposed stabilization and repair method or technique must comply with the standards provided in this section and §15.6(e) and (f) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(e) Procedure. The permit and certificate application requirements of §15.3(s)(4) of this title (relating to Administration) are not applicable to the emergency stabilization and repair of structures, however, all property owners eligible to undertake emergency stabilization efforts and repair must receive prior approval for such actions from the local government officials responsible for approving such actions. Any action that is not necessary for the emergency stabilization and repair of structures will require a permit and/or certificate before such action is undertaken. An authorization issued by a local government under this section shall be valid for no more than 6 months from the date of issuance. A local government shall not renew an authorization issued under this section.

(f) Written Record. Local governments authorizing emergency stabilization and repair of structures shall compile and maintain a record of the names and addresses of the property owners that receive such authorization. For each authorization, the local government must maintain a written record of the actions that it authorized, including pictures of the structure before and after completion of the authorized activities, and will make such record available for inspection by the General Land Office upon request. Within one week of the expiration of this rule, local governments shall submit to the General Land Office copies of the complete written record of actions authorized under this section.

(g) Authorized Repairs. Local governments may authorize emergency stabilization and repair of a structure only if the local government determines that the proposed action:

(1) is solely to make the house habitable or prevent further damage, including reconnecting the house to utilities;

(2) does not increase the footprint of the house;

(3) does not include the use of impervious material, including but not limited to concrete or fibercrete, seaward of the natural line of vegetation;

(4) does not include the construction of an enclosed space below the base flood elevation and seaward of the natural line of vegetation;

(5) does not include the repair, construction, or maintenance of an erosion response structure seaward of the natural line of vegetation;

(6) does not occur seaward of mean high water; and,

(7) does not include construction underneath, outside or around the house other than for reasonable access to the house.

(h) Existing structures on the public beach.

(1) Local governments may grant authorization in accordance with this section for emergency stabilization of structures that encroach on the public beach, but only to the limited extent necessary to prevent an immediate threat to public health, safety, and welfare.

(2) Local governments may grant authorization in accordance with this section for emergency repair of a structure that encroaches on the public beach, but only if the structure is:

(A) a house; and,

(B) not in imminent danger of collapse or other imminent threat to public health and safety.

(3) Beach-quality sand may be placed on the lot in the area five feet seaward of a structure where necessary to prevent further erosion due to wind or water. The beach-quality sand must remain loose and cannot be placed in bags. Such actions are authorized in situations where protection of the land immediately seaward of a structure is required to prevent foreseeable undermining of habitable structures in the event of such erosion.

(i) Local governments are not authorized under this rule to allow the use of concrete or the construction or repair of bulkheads, geotubes, or hard protective structures.

(j) Repair of sewage or septic systems. If the Texas Commission on Environmental Quality or its designated local authority, the Texas Department of Health, or a local health department has made a determination that a sewage or septic system located on or adjacent to the public beach poses a threat to the health of the occupants of the property or public health, safety or welfare, and requires removal of the sewage or septic system, the sewage or septic system shall be located in accordance with §15.5(b)(1) of this title (relating to Beachfront Construction Standards) and §15.6(b) and §15.6(e)(1) of this title (relating to Concurrent Dune Protection and Beachfront Construction Standards).

(k) Prohibitions. This emergency rule does not authorize the placement of materials on the public beach except in conjunction with authorized emergency stabilization and repair of structures.

(l) Removal of beach debris. Beach debris moved by wind or water can threaten Gulf-fronting properties. Local governments, therefore, shall coordinate with property owners to remove debris such as pilings, concrete and garbage from the public beach as soon as possible.

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

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304328

Jerry E. Patterson
Commissioner
General Land Office
Effective Date: July 16, 2003
Expiration Date: October 14, 2003
For further information, please call: (512) 305-9129

PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 3. OFFICE OF THE ATTORNEY GENERAL

CHAPTER 60. TEXAS CRIME VICTIM SERVICES GRANT PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS AND ELIGIBILITY

1 TAC §§60.2, 60.10, 60.12

The Office of the Attorney General (OAG) proposes amendments to Subchapter A, §§60.2, 60.10 and 60.12, relating to rules governing the Texas Crime Victim Services Grant Programs.

The OAG proposes these revisions to the current rules in order to provide clarity on the grant process. The revision of §60.2 will allow the OAG or a grantee, with the approval of the OAG, to waive a part of the rules in extreme circumstances, when necessary. The proposed revision of §60.10 addresses the possibility that grants can be awarded above or below the funding level or the requested amount. Due to the legislative appropriation of the funds for these grant programs, the OAG proposes revisions to §60.12 ensure that continuation grantees are aware that there is no commitment to continue funding once they are funded. The anticipated effect of the proposal is increased clarity in the grant process for grantees and applicants.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for the first five-year period the amended sections are in effect, there will be no fiscal implications to state or to local governments as a result of enforcing or administering the sections as amended.

Mr. Millholland has determined that for the first five-year period in which the proposed amendments are in effect, the anticipated public benefit is the more efficient administration of the Crime Victims Compensation fund for grants or contracts supporting victim-related services or assistance.

Mr. Millholland has also determined that for the first five-year period in which the proposed amendments are in effect, the amended sections will not have an adverse economic effect on small businesses because the amendments to these rules impose no additional burden on any entity. There is no anticipated economic cost to persons who are required to comply with these rules as proposed.

Comments may be submitted no later than 30 days from the date of this publication to the Crime Victim Services Division, Office of the Attorney General, attention: TAC Rules Comments, P.O. Box 12548, Austin, Texas, 78711-2548, or by e-mail to CVS-Grants@oag.state.tx.us.

The amendments are proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

Texas Code of Criminal Procedure Article 56.541 is affected by the proposed amendments.

§60.2. Construction of Rules.

Unless otherwise noted, these rules apply to both OVAG and VCLG grant programs. If good cause is established to show that compliance with these rules may result in an injustice to any party, the rules may be suspended at the discretion of the Attorney General or his designee.

§60.10. Funding Limits.

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

(d) The amount of an award is determined solely by the OAG. The OAG may award grants at amounts above or below the established funding levels and is not obligated to fund a grant at the amount requested.

§60.12. Continuation of Funding.

There is no commitment by the OAG that a grant, once funded, will receive subsequent funding. [~~Continuation of funding for existing grant projects is dependent upon a grantee meeting all requirements of this chapter and having a history of timely submission of performance and financial reports.~~]

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

Filed with the Office of the Secretary of State on July 15, 2003.

TRD-200304284
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Earliest possible date of adoption: August 31, 2003
For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

SUBCHAPTER B. APPLICATION, REVIEW AND AWARD PROCESS

1 TAC §60.103

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

The Office of the Attorney General (OAG) proposes the repeal of §60.103, relating to rules governing the Texas Crime Victim Services Grant Programs, and simultaneously proposes new §60.103, in a separate document.

The OAG proposes this repeal in order to provide clarity on the grant process. The repeal of §60.103, if adopted, harmonizes the rules with the timing of the grant award process. The anticipated effect of the repeal is greater clarity in the grant application and award process.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for the first five-year period the proposed repeal is in effect there will be no fiscal implications to state or to local governments as a result of enforcing or administering the repeal.

Mr. Millholland has determined that for the first five-year period in which the proposed repeal is in effect, the anticipated public benefit is the more efficient administration of the Crime Victims Compensation fund for grants or contracts supporting victim-related services or assistance.

Mr. Millholland has also determined that for the first five-year period in which the proposed repeal is in effect, there will not be an adverse economic effect on small businesses because the repeal would impose no additional burden on any entity. There is no anticipated economic cost to persons who are required to comply with the proposed repeal.

Comments may be submitted no later than 30 days from the date of this publication to the Crime Victim Services Division, Office of the Attorney General, attention: TAC Rules Comments, P.O. Box 12548, Austin, Texas, 78711-2548, or by e-mail to CVS-Grants@oag.state.tx.us.

The repeal is proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

Texas Code of Criminal Procedure Article 56.541 is affected by the proposed repeal.

§60.103. Review of Denial.

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

Filed with the Office of the Secretary of State on July 15, 2003.

TRD-200304282

Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: August 31, 2003

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

1 TAC §60.103

The Office of the Attorney General (OAG) proposes new §60.103, relating to rules governing the Texas Crime Victim Services Grant Programs, and simultaneously proposes the repeal of §60.103, in a separate document.

The OAG proposes this new section in order to provide clarity on the grant process. New §60.103 clarifies that the OAG's decision on a grant award is final. The anticipated effect of the new section is greater clarity in the grant application and award process.

Herman Millholland, Chief, Crime Victim Services Division of the Office of the Attorney General, has determined that for the first five-year period the proposed section is in effect there will be no fiscal implications to state or to local governments as a result of enforcing or administering the section.

Mr. Millholland has determined that for the first five-year period in which the proposed section is in effect, the anticipated public benefit is the more efficient administration of the Crime Victims Compensation fund for grants or contracts supporting victim-related services or assistance.

Mr. Millholland has also determined that for the first five-year period in which the proposed section is in effect, there will not be an adverse economic effect on small businesses because the section would impose no additional burden on any entity. There is no anticipated economic cost to persons who are required to comply with the proposed section.

Comments may be submitted no later than 30 days from the date of this publication to the Crime Victim Services Division, Office of the Attorney General, attention: TAC Rules Comments, P.O. Box 12548, Austin, Texas, 78711-2548, or by e-mail to CVS-Grants@oag.state.tx.us.

The new section is proposed under the Texas Code of Criminal Procedure, Title 1, Article 56.541(f), which authorizes the Office of the Attorney General to adopt rules reasonable and necessary to implement Article 56.541, and in order to use money of the CVC fund for grants or contracts that support crime victim-related services or assistance.

Texas Code of Criminal Procedure Article 56.541 is affected by the proposed new section.

§60.103. Review of Denial.

All funding decisions made by the Attorney General or his designee are final and are not subject to appeal.

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

Filed with the Office of the Secretary of State on July 15, 2003.

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Nancy S. Fuller

Assistant Attorney General

Office of the Attorney General

Earliest possible date of adoption: August 31, 2003

For information regarding this publication, you may contact A.G. Younger, Agency Liaison, at (512) 463-2110

TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 115. SECURITIES DEALERS AND AGENTS

7 TAC §115.5

The State Securities Board proposes an amendment to §115.5, concerning minimum recordkeeping for securities dealers and their agents. The proposal would make slight changes to a few existing recordkeeping requirements, add several new recordkeeping requirements focused on compliance documentation, extend the required retention periods to coordinate with those at the federal level, and encourage record retention at local offices in Texas. The proposed changes would essentially formalize practices already in place at most reputable firms.

Don Raschke, Chief Financial Officer, and Joel Sauer, Assistant Director, Inspections and Compliance Division, have determined that for the first five-year period the rule is in effect there will be no foreseeable fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Raschke and Mr. Sauer also have 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 improve the ability of registered dealers to carry out their supervisory duties, help the Staff to conduct quicker and more effective inspections of registered dealers, and better coordinate the Board's Rules with those applicable to federally registered dealers. There will be no effect on micro- or small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed. There is no anticipated impact on local employment.

Comments are specifically sought regarding the provision in §115.5(b)(13)(A)(iii) that excuses a dealer from obtaining required account record information when the customer or owner neglects, refuses, or is unable to provide or update that information.

Comments on the proposal to be considered by the Board should be submitted in writing within 30 days after publication of the proposed section in the *Texas Register*. Comments should be sent to David Weaver, State Securities Board, P.O. Box 13167, Austin, Texas 78711-3167, or sent by facsimile to (512) 305-8310.

The amendment is proposed under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

Statutes and codes affected: none applicable.

§115.5. Minimum Records.

(a) (No change.)

(b) Records to be made by certain dealers. A person or company registered in Texas as a [~~general~~] securities dealer [~~or a dealer in municipal securities~~] shall make and keep current the following minimum records or the equivalent thereof.

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

(6) Order memoranda:

(A) A memorandum of each brokerage order and of any other instruction given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modifications or cancellation thereof, the account for which entered, the time the order was received, the time of entry, the price at which executed, the identity of each employee, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry, and, to the extent feasible, the time of execution or cancellation. The memorandum need not show the identity of any person, other than the employee responsible for the account, who may have entered or accepted the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible employee; in that circumstance, the dealer shall maintain a separate record that identifies each other person. Orders entered pursuant to the exercise of discretionary power by such dealer or any of its employees shall be so designated. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such dealer transmits the order or instruction for execution [~~or, if it is not so transmitted, the time when it is received~~].

(B) This memorandum need not be made as to a purchase, sale or redemption of a security on a subscription way basis directly from or to the issuer, if the dealer maintains a copy of the customer's subscription agreement regarding a purchase, or a copy of any other document required by the issuer regarding a sale or redemption.

(7) A memorandum of each purchase and sale for the account of such dealer showing the price, and, to the extent feasible, the time of execution; and, in addition, where such purchase or sale is with a customer other than a [~~broker or~~] dealer, a memorandum of each order received, showing the time of receipt, the terms and conditions of the order [~~,~~] and of any modification thereof, the account in which it was entered, the identity of each employee, if any, responsible for the account, the identity of any other person who entered or accepted the order on behalf of the customer or, if a customer entered the order on an electronic system, a notation of that entry. The memorandum need not show the identity of any person other than the employee responsible for the account who may have entered the order if the order is entered into an electronic system that generates the memorandum and if that system is not capable of receiving an entry of the identity of any person other than the responsible employee; in that circumstance, the dealer shall maintain a separate record that identifies each other person. An order with a customer other than a dealer entered pursuant to the exercise of discretionary authority by the dealer, or agent thereof, shall be so designated.

(8)-(11) (No change.)

(12) A record listing of every agent of the dealer that shows, for each agent, every office of the dealer where the agent regularly conducts the business of handling funds or securities or effecting any transaction in, or inducing or attempting to induce the purchase or sale of any security for the dealer, and the Central Registration Depository number, if any, and every internal identification number or code assigned to that agent by the dealer.

(13) For each account with a natural person as a customer or owner:

(A) For each account with a natural person as a customer or owner:

(i) An account record including the customer's or owner's name, tax identification number, address, telephone number,

date of birth, employment status (including occupation and whether the customer is an agent of a dealer), annual income, net worth (excluding value of primary residence), and the account's investment objectives. In the case of a joint account, the account record must include personal information for each joint owner who is a natural person; however, financial information for the individual joint owners may be combined. The account record shall indicate whether it has been signed by the agent responsible for the account, if any, and approved or accepted by a supervisor of the dealer. For accounts in existence on the effective date of this section, the dealer must obtain this information within three years of May 2, 2003.

(ii) A record indicating that:

(I) The dealer has furnished to each customer or owner within three years of May 2, 2003, and to each customer or owner who opened an account after May 2, 2003 within 30 days of the opening of the account, and thereafter at intervals no greater than 36 months, a copy of the account record or an alternate document with all information required by clause (i) of this subparagraph. The dealer may elect to send this notification with the next statement mailed to the customer or owner after the opening of the account. The dealer may choose to exclude any tax identification number and date of birth from the account record or alternate document furnished to the customer or owner. The dealer shall include with the account record or alternate document provided to each customer or owner an explanation of any terms regarding investment objectives. The account record or alternate document furnished to the customer or owner shall include or be accompanied by prominent statements that the customer or owner should mark any corrections and return the account record or alternate document to the dealer, and that the customer or owner should notify the dealer of any future changes to information contained in the account record.

(II) For each account record updated to reflect a change in the name or address of the customer or owner, the dealer furnished a notification of that change to the customer's old address, or to each joint owner, and the agent, if any, responsible for that account, on or before the thirtieth day after the date the dealer received notice of the change.

(III) For each change in the account's investment objectives the dealer has furnished to each customer or owner, and the agent, if any, responsible for that account a copy of the updated customer account record or alternative document with all information required to be furnished by clause (i) of this subparagraph, on or before the thirtieth day after the date the dealer received notice of any change, or, if the account was updated for some reason other than the dealer receiving notice of a change, after the date the account record was updated. The dealer may elect to send this notification with the next statement scheduled to be mailed to the customer or owner.

(iii) For purposes of this paragraph, the neglect, refusal, or inability of a customer or owner to provide or update any account record information required under subparagraph (A)(i) of this paragraph shall excuse the dealer from obtaining that required information.

(iv) The account record requirements in subparagraph (A)(i) of this paragraph shall only apply to accounts for which the dealer is, or has within the past 36 months been, required to make a suitability determination. Additionally, the furnishing requirement in clause (ii)(I) of this subparagraph shall not be applicable to an account for which, within the last 36 months, the dealer has not been required to make a suitability determination. Clause (iii) of this subparagraph does not relieve a dealer from any regulatory obligation regarding the collection of information from a customer or owner.

(B) If an account is a discretionary account, a record containing the dated signature of each customer or owner granting the authority and the dated signature of each natural person to whom discretionary authority was granted.

(C) A record for each account indicating that each customer or owner was furnished with a copy of each written agreement entered into on or after May 2, 2003 pertaining to that account and that, if requested by the customer or owner, the customer or owner was furnished with a fully executed copy of each agreement.

(14) A record:

(A) As to each agent of each written customer complaint received by the dealer concerning that associated person. The record shall include the complainant's name, address, and account number; the date the complaint was received; the name of any other agents identified in the complaint; a description of the nature of the complaint; and the disposition of the complaint. Instead of the record, a dealer may maintain a copy of each original complaint in a separate file by the agent named in the complaint along with a record of the disposition of the complaint.

(B) Indicating that each customer of the dealer has been provided with a notice containing the address and telephone number of the department of the dealer to which any complaints as to the account may be directed.

(15) A record:

(A) As to each agent listing each purchase and sale of a security attributable, for compensation purposes, to that agent. The record shall include the amount of compensation if monetary and a description of the compensation if non-monetary. In lieu of making this record, a dealer may elect to produce the required information promptly upon request of a representative of the Securities Commissioner.

(B) Of all agreements pertaining to the relationship between each agent and the dealer including a summary of each agent's compensation arrangement or plan with the dealer, including commission and concession schedules and, to the extent that compensation is based on factors other than remuneration per trade, the method by which the compensation is determined.

(16) A record, which need not be separate from the advertisements, sales literature, or communications, documenting that advertisements, sales literature, or any other communications with the public by a dealer or its agents have been approved by a supervisor.

(17) A record for each office listing, by name or title, each person at that office who, without delay, can explain the types of records the dealer maintains at that office and the information contained in those records.

(18) A record listing each supervisor of a dealer responsible for establishing policies and procedures that require acceptance or approval of a record by a supervisor.

(c) (No change.)

(d) Maintenance of office records. [~~Restricted dealers. Dealers registered in restricted categories, other than municipal securities dealers, such as oil and gas dealers and real estate dealers, etc., shall keep and maintain records adequate to accurately reflect customer transactions, and the dealer's financial condition. Compliance with the record-keeping requirements of the United States Securities and Exchange Commission, found in 17 Code of Federal Regulations §240.17a-3 and §240.17a-4, will satisfy the requirements of this~~

section; provided such dealers shall maintain at least the following information:]

(1) Every dealer shall make and keep current, as to each office, the books and records described in paragraphs (1), (6), (7), (11), (13), (14)(A), (15), (16), (17), and (18) of subsection (b) this section.[Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash, and other debits and credits. Such records shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person from whom purchased or received or to whom sold or delivered;]

(2) When used in this section, the term "office" means any location where one or more agents regularly conduct the business of handling funds or securities or effecting any transactions in, or inducing or attempting to induce the purchase or sale of, any security. The term "office" as used in this section is not related to the term "branch office" defined in §115.1 of this chapter (relating to General Provisions). [Ledgers (or other records) that reflect all assets and liabilities, income and expense, and capital accounts; and]

[(3) A questionnaire or application for employment executed by each partner, officer, director, agent, trader, manager, and each employee who handles funds or securities or who solicits transactions or accounts for such dealer, which questionnaire or application shall be approved in writing by an authorized representative of such dealer and shall contain at least the following information with respect to such person (in the case of persons registered with the State Securities Board, a copy of their application for registration as an agent, officer, or partner will satisfy this requirement):]

[(A) name, address, social security number, and the starting date of employment or other association with the dealer;]

[(B) date of birth;]

[(C) the educational institutions attended and whether he or she graduated therefrom;]

[(D) a complete, consecutive statement of all business connections for at least the preceding 10 years, including the reason for leaving each prior employment, and whether the employment was part-time or full-time;]

[(E) a record of any denial, suspension, expulsion, or revocation of membership or registration of any dealer he or she was associated with in any capacity when such action was taken;]

[(F) a record of any denial of membership or registration, and of any disciplinary action taken, or sanction imposed, on the person by any federal or state agency, or by any national securities exchange or national securities association, including any finding that he or she was a cause of any disciplinary action or had violated any law;]

[(G) a record of any permanent or temporary injunction entered against the person or any dealer he or she was associated with in any capacity at the time such injunction was entered;]

[(H) a record of any arrest or indictment for any felony or misdemeanor, and the disposition of any such arrest or indictment or further explanation thereof, and a record of any conviction for any felony or any misdemeanor, except minor traffic offenses, of which he or she has been the subject; and]

[(I) a record of any other name or names he or she has been known by or has used.]

(e) Records to be preserved by dealers.

(1) Persons subject to subsection (b) of this section shall preserve:

(A) all records required to be made pursuant to paragraphs (1), (2), (3), [and] (5), (17), and (18) of subsection (b) of this section for a period of not less than six [five] years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place; and

(B) all records required to be made pursuant to paragraphs (4), [and] (6) - (10), and (14)-(16) of subsection (b) of this section for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place. [; and]

(2) Persons subject to subsection (b) of this section shall maintain and preserve in an easily accessible place:

(A) [(C)] all records required to be made pursuant to paragraph (11) of subsection (b) of this section until at least three years following termination of the employment or other relationship between the dealer and the person to whom the records relate; [.]

(B) All account record information required pursuant to subsection (b)(13) of this section until at least six years after the earlier of the date the account was closed or the date on which the information was replaced or updated;

(C) Each report which a securities regulatory authority has requested or required the dealer to make and furnish to it pursuant to an order or settlement, and each securities regulatory authority examination report until three years after the date of the report;

(D) Each compliance, supervisory, and procedures manual, including any updates, modifications, and revisions to the manual, describing the policies and practices of the dealer with respect to compliance with applicable laws and rules, and supervision of the activities of each natural person associated with the dealer until three years after the termination of the use of the manual; and

(E) All reports produced to review for unusual activity in customer accounts until 18 months after the date the report was generated. In lieu of maintaining the reports, a dealer may produce promptly the reports upon request by a representative of the Securities Commissioner. If a report was generated in a computer system that has been changed in the most recent 18 month period in a manner such that the report cannot be reproduced using historical data in the same format as it was originally generated, the report may be produced by using the historical data in the current system, but must be accompanied by a record explaining each system change which affected the reports. If a report is generated in a computer system that has been changed in the most recent 18 month period in a manner such that the report cannot be reproduced in any format using historical data, the dealer shall promptly produce upon request a record of the parameters that were used to generate the report at the time specified by a representative of the Securities Commissioner, including a record of the frequency with which the reports were generated.

[(2) Persons subject to subsection (d) of this section shall preserve all records required to be made pursuant to subsection (d) of this section for a period of not less than five years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place.]

(3) Persons registered as dealers in Texas [, including restricted dealers,] shall preserve for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an easily accessible place:

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

(C) originals of all communications received and copies of all communications sent by the dealer (including interoffice memoranda and communications) relating to the business of the dealer. As used in this subparagraph, the term "communications" includes sales scripts;

(D)-(H) (No change.)

(4) Persons registered as dealers in Texas shall preserve for a period of not less than six [five] years from when [the end of the fiscal year during which] a customer's account was closed, any account cards or records which relate to the terms and conditions with respect to the opening and maintenance of such account.

(5) Persons registered as dealers in Texas shall preserve for at least three years after the termination of the enterprise partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the dealer and of any predecessor, all Forms BD, all Forms BDW, all amendments to these forms, all licenses or other documentation showing the registration of the dealer with any securities regulatory authority.

(6)-(9) (No change.)

(f) (No change.)

(g) Records for the most recent two year period required to be made and maintained pursuant to subsections (d), (e)(2)(D), and (e)(3)(C) of this section, which relate to an office shall be maintained at the office to which they relate. If an office is a private residence where only one agent (or multiple agents who reside at that location and are members of the same immediate family) regularly conducts business, and it is not held out to the public as an office nor are funds or securities of any customer of the dealer handled there, the dealer need not maintain records at that office, but the records must be maintained at another location within Texas as the dealer may select. Rather than maintain the records at each office, the dealer may choose to produce the records promptly at the request of a representative of the Securities Commissioner at the office to which they relate or at another location agreed to by the representative.

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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Denise Voigt Crawford
Securities Commissioner
State Securities Board
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For further information, please call: (512) 305-8300

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

The Railroad Commission of Texas proposes to amend §3.78, relating to Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed.

The Commission proposes the amendments to §3.78 under the provisions of Texas Natural Resources Code, §85.167 and §91.142, which specify fees to be collected by the Commission for reissuance of certificates of compliance for oil leases and gas wells which have been canceled and organization report fees; Texas Natural Resources Code, §91.103, §91.104, and §91.109, which relate to bonds, letters of credit, cash deposits and alternate forms of financial security; and Texas Natural Resources Code, §91.114, which relates to acceptance of organization reports or applications for permits and approval of certificates of compliance.

The proposed fee change amendments to §3.78(b) and §3.78(c) implement statutory changes made to the Texas Natural Resources Code by House Bill (HB) 1195 and HB 942, 78th Legislature (2003).

Proposed amendments to §3.78(b) increase the fee for reissuance of a certificate of compliance for an oil lease or gas well that previously has been canceled from $100 to $300 for each severance or seal order issued for the lease or well. Proposed amendments to §3.78(b) also provide that if a check for this fee is not honored upon presentment, the reissued certificate of compliance may be suspended or revoked.

Proposed amendments to §3.78(c) increase fees for filing an organization report by an operator of one or more natural gas pipelines from $100 to $225. The amendments to §3.78(c) also establish a separate organization report fee category for operators of one or more liquids pipelines and increase the organization report fee for such operators from $500 to $625. The amendments to §3.78(c) also clarify that the total organization report fee that must be submitted is a fee equal to the sum of the separate fees applicable to each category of service activity, facility, pipeline, or number of wells operated and increase the maximum amount of organization report fees that must be submitted by an operator of wells from $1,000 to $1,125.

The proposed fee change amendments are necessary to conform §3.78 to increased fees prescribed or authorized by HB 1195 and HB 942, 78th Legislature (2003) and to clarify existing provisions relating to organization report fees. The increased fees implemented by the proposed amendments will financially strengthen the Oil Field Clean Up Fund (OFCUF) and assist in plugging of abandoned wells and cleanup of pollution.

The proposed amendments also amend §3.78(a) by deleting current paragraph (7) defining "individual well bond" and by adding new paragraphs (10) through (12) to provide definitions of "officers and owners," "letter of credit," and "bond," as these terms are used in §3.78. The definition of "individual well bond" is no longer necessary in view of the proposed amendment deleting current §3.78(m) pertaining to individual well bonds.

The proposed amendments to §3.78 also provide new or amended provisions relating to the circumstances in which a person required to file an organization report with the Commission may file financial security in the form of a nonrefundable annual fee of $1,000.

Proposed amendments to §3.78(d) provide that the required determination concerning the availability of individual and blanket performance bonds at reasonable prices may be made by a designee of the Commission. Proposed amendments to §3.78(e)

delete paragraph (1) defining "officers and owners" because this definition is included in the proposed amendments to §3.78(a). The proposed amendments to §3.78(a) add to the definition of "officers and owners" any person determined by a final judgment or final administrative order to have exercised control over an organization.

The proposed amendments to §3.78(f) make changes in the criteria by which an eligible operator wishing to file financial security in the form of a nonrefundable annual fee of $1,000 can overcome the presumption that bonds are obtainable by that operator at reasonable prices.

The proposed amendments to §3.78(f) also provide that an operator may request an administrative determination, rather than a hearing, to determine that individual and blanket performance bonds are not available to that operator at reasonable prices.

The amendments to §3.78(f) provide that in order to support an administrative determination that bonds are not obtainable by a requesting operator at reasonable prices, the operator must submit declination letters establishing that three companies from a list maintained by the Commission that have issued a bond filed with the Commission in the past 12 months will not issue a bond to the requesting operator or will issue a bond to the operator only for an annual fee in excess of 6% of the face amount of the bond. Under the proposed amendments, if an operator requesting this administrative determination has a bond as its current financial assurance, one of the three declination letters must be from that operator's current surety. The proposed amendments change the current requirement that an operator establish that no fewer than three companies will not issue a bond to the operator for an annual fee less than 12% of the face amount of the bond.

The proposed amendments to §3.78(f) also provide that if an operator's application for the nonrefundable annual fee of $1,000 is administratively denied, the operator may request a hearing to determine the operator's eligibility for this fee. Under the amendments, the Commission would be required to consider cash or other collateral requirements, along with the premium and any other surety requirements, in determining if bonds are available to the requesting operator at a reasonable price.

The provisions of Senate Bill (SB) 310, 77th Legislature (2001), and Texas Natural Resources Code, §91.104, as amended, and current §3.78 have had the beneficial effect of increasing the percentage of operators who file a bond, letter of credit, or cash deposit as financial security. As of May 23, 2003, 85.2% of the total number of active operators of all types had filed an individual or blanket performance bond, a letter of credit, or a cash deposit as financial security. This compares to only 8.6% that had filed one of these forms of financial security as of January 18, 2001. The increase in the percentage of bonded operators has decreased the risk to the OFCUF and furthered the objectives of the Legislature, the Commission, and the industry to ensure that inactive wells are plugged and pollution is cleaned up in order to protect surface and subsurface usable quality water.

Under SB 310 and Texas Natural Resources Code, §91.104, as amended effective September 1, 2001, operators with an acceptable record of compliance were given the option of filing financial security in the form of an nonrefundable annual fee of $1,000 if the Commission determined that individual bonds and blanket performance bonds were not obtainable at reasonable prices. Experience gained by the Commission in processing applications to file financial security in the form of the nonrefundable annual fee of $1,000 has shown that while bonds are generally available at reasonable prices to operators, bonds are not readily available or obtainable by all operators. From January 2001 to June 25, 2003, the percentage of operators with a bond, letter of credit, or cash deposit has increased from 8.6% of all operators to 85.2% of all operators. The total number of operators with organizational bonds has increased from 411 to 1368 over the same period. Further, from January 2003 through June 2003, 244 organization reports were filed (including name changes) by entities that did not have active organization reports in the prior month. The majority of these new filers (88%) filed a bond, letter of credit or cash deposit as their financial assurance. More than 30% of the new filers (78 out of 244) obtained and filed a bond as financial assurance. However, some smaller operators, even those with an acceptable record of compliance, have been unable to obtain bonds at any price, and others have been unable to obtain bonds for a reasonable premium without posting cash or other collateral equal to the face amount of the bond.

The presumption of §3.78(f) that bonds are generally obtainable at reasonable prices by operators remains valid. However, Commission experience with applicants for the nonrefundable annual fee of $1,000 over the past 18 months has shown that due to varying circumstances of operators, and varying conditions in different parts of the state, bonds may not be readily obtainable by all operators at all times. The current requirement of §3.78(f) that operators seeking approval to file the nonrefundable annual fee of $1,000 must establish that no fewer than three sureties will not issue a bond to the operator for an annual fee less than 12% of the face amount of the bond is no longer deemed reasonable. The current provision does not adequately address the situation where sureties are unwilling to bond an operator at any price. In addition, where sureties are willing to bond an operator, the bond premium is almost always substantially below 12% of the face amount of the bond. Experience gained by the Commission in administering §3.78 since September 1, 2001, shows that the 6% standard proposed by the amendments to §3.78(f) is more reasonable and realistic in the current bond market.

In current §3.78 there is no provision which expressly authorizes consideration of cash or other collateral requirements imposed by surety companies as a condition to the issuance of a bond to a requesting operator. The cost to the operator of posting collateral may be a relevant factor in determining the reasonableness of the total bond price to the operator attempting to obtain the bond. The proposed amendments to §3.78(f) are necessary to address this issue and do so by requiring Commission consideration of collateral requirements if an operator requests a hearing following administrative denial of an application for approval to file the nonrefundable annual fee of $1,000 as financial security.

Under strict application of the current provisions of §3.78, only a few applications for approval to file financial security in the form of a nonrefundable annual fee of $1,000 have been approved. Pursuant to SB 310 and Texas Natural Resources Code, §91.104 as amended effective September 1, 2004, all operators, except those that are engaged only in activities exempt from financial assurance, will be required to file as financial security a bond, letter of credit, or cash deposit. Alternate forms of financial security will no longer be permitted. In view of the experience gained by the Commission since September 1, 2001, pertaining to bond availability, the proposed amendments to §3.78(f) are necessary to provide more flexible and less burdensome standards and procedures for eligible operators to obtain approval to file the nonrefundable annual fee of $1,000 as financial security. This will enable these operators to continue to operate in the interim period prior to September 1, 2004, and to prepare for meeting the

more stringent financial security requirements which will take effect on that date.

The filing of a bond, letter of credit, or cash deposit will continue to be the preferred form of financial security in the interim period prior to September 1, 2004. Operators will be permitted to file the nonrefundable annual fee of $1,000 only if they possess the required acceptable record of compliance with Commission rules and orders and establish that bonds are not available to the requesting operator at reasonable prices. Under the proposed amendments to §3.78(f), an operator having a bond on file who seeks approval to file the nonrefundable annual fee of $1,000 will be required to submit a declination letter from the operator's current surety to affirm that bonds are not available to the requesting operator at a reasonable price.

The Commission anticipates that most operators will continue to file bonds, letters of credit, or cash deposits as financial security. This eliminates the requirement that an operator seek plugging extensions and pay the associated fee for inactive wells and enables operators to accept transfers of wells from other operators, which are benefits not available to operators filing alternate forms of financial security. Any risk to the OFCUF as a result of the proposed amendments to §3.78(f) will be ameliorated by the short time which remains before bonds, letters of credit, or cash deposits become the only permitted form of financial security and by the fact that the option to file the nonrefundable annual fee of $1,000 will continue to be available only to those operators who possess an acceptable record of compliance with the Commission's rules and orders.

The Commission acknowledges that §3.78(f)(1) and §3.78(f)(2)(A)-(B) were declared invalid by ruling of the 261st District Court of Travis County, Texas, announced June 11, 2003, in Cause No. GN202946, *Ross H. Hardwick Oil Company, et. al. v. Railroad Commission of Texas*, based on the Court's determination that the Commission failed to comply with Texas Government Code, §2006.002. The proposed amendments amend §3.78(f)(2)(A). Current §3.78(f)(2)(B) and §3.78(f)(1) remain unchanged. The analysis required by Texas Government Code, §2006.002 for proposed §3.78(f), including the portion determined to be invalid by the Court's ruling, is provided by this notice.

The proposed amendments also amend §3.78(j) pertaining to the amount of bonds, letters of credit, or cash deposits which must be filed by persons filing one of these forms of financial security. These amendments are necessary in order to implement the provisions of HB 942, 78th Legislature (2003), effective September 1, 2003. The proposed amendments to §3.78(j) eliminate the requirement for a person whose only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser, or well plugger to file financial security. The proposed amendments to §3.78(j) also clarify that a person who engages in more than one Commission regulated activity or operation is not required to file a separate bond or alternate form of financial security for each activity or operation. Under the proposed amendments, a person with multiple activities or operations is required to file a bond or alternate form of financial security in the greatest amount applicable to any of its activities or operations, except that a separate bond must be filed for commercial facilities activities subject to the financial security requirements of §3.78(o).

The proposed amendments to §3.78 also delete current subsection (m) pertaining to individual well bonds. The Commission has determined that small operators have had difficulty in obtaining individual well bonds. In addition, the Commission has determined that the individual well bond requirement of current §3.78(m) has made it impractical for many small operators to file an alternate form of financial security, including the nonrefundable annual fee of $1,000. In some cases, the total amount of individual well bonds required under current §3.78(m) in order to obtain plugging extensions for wells that have been inactive for 36 months or more has exceeded the amount of individual or blanket performance bonds, letters of credit, or cash deposits required under §3.78(j)(1)-(2). Inability to file an individual or blanket performance bond, letter of credit, or cash deposit as financial security, coupled with the inability to file an alternate form of financial security because of individual well bond requirements, has prevented some small operators, even those with an acceptable record of compliance, from renewing their organization reports.

The Commission has determined that the individual well bond requirement of current §3.78(m) can be eliminated without posing a significant risk to the OFCUF, particularly since effective September 1, 2004, all operators will be required to file an individual or blanket performance bond, letter of credit, or cash deposit as financial security covering all operations.

The proposed amendments also amend current §3.78(n) by re-lettering it as subsection (m) and adding new paragraph (4) providing that an operator who has accepted a transfer of operatorship of any well or lease on or after September 1, 2001, with Commission approval based on filing of an individual or blanket performance bond, letter of credit, or cash deposit, is deemed to have elected to file one of these forms of financial security and shall file one of these forms of financial security for each successive year during which the operator remains the designated operator of any such well or lease.

The amendments in proposed §3.78(m) are necessary to give effect to Texas Natural Resources Code, §91.107. In conformity with this section of the Code, current §3.78(n), proposed to be re-lettered as subsection (m), currently provides that the Commission shall not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well has on file with the Commission an individual or blanket performance bond, letter of credit, or cash deposit. For these provisions to have their intended effect, the amendment in proposed §3.78(m) is necessary to ensure that an operator who has accepted a transfer of operatorship of a well or lease with Commission approval, based on the operator's filing of an individual or blanket performance bond, letter of credit, or cash deposit, is bound to continue filing one of these same forms of financial security for so long as the operator remains the designated operator of the well or lease.

The proposed amendments also re-letter current §3.78(p) to subsection (o) and eliminate the current provision that the owner or operator of a commercial facility may reduce the amount of financial security required under §3.78(p) by $25,000 if the owner or operator holds only one commercial facility permit. This amendment is necessary because the provision being eliminated assumes that the operator of the commercial facility is required to file a bond in the amount of $25,000 under other provisions of §3.78, when in fact the amount of financial security required under other provisions may be a lesser amount. The proposed amendments in proposed §3.78(o) clarify that the owner or operator of one or more commercial facilities may reduce the amount of financial security required under §3.78(p) for one such facility by the amount, if any, it filed as financial

assurance under §3.78(j)(3). These amendments in proposed §3.78(o) are necessary to ensure that operators of commercial facilities have adequate financial security on file to cover commercial facilities operations.

The proposed amendments to §3.78 also add a new subsection (p) relating to the effect of outstanding violations. This proposed new subsection provides that the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if the organization has outstanding violations, or an officer or director of the organization was, within seven years preceding the filing of the report, application, or certificate, an officer or director of an organization and during that period, the organization committed a violation that remains an outstanding violation.

Proposed §3.78(p) also creates an exception to the above provisions by providing that the Commission shall accept a report or application or approve a certificate of an organization if the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule agreed to by the organization and the Commission; all administrative, civil, and criminal penalties and all plugging and cleanup costs incurred by the state relating to those conditions have been paid or are being paid in accordance with a schedule agreed to by the organization and the Commission; and the report, application, or certificate is in compliance with all other requirements of law and Commission rules. Proposed §3.78(p) also provides that all fees tendered in connection with a report or application that is rejected under §3.78(p) are nonrefundable.

The proposed amendments adding new subsection (p) to §3.78 are necessary to conform §3.78 to Texas Natural Resources Code, §91.114, as amended by SB 1484, effective September 1, 2003.

Leslie Savage, Administrative Planner, Planning and Administration, Oil and Gas Division has determined that for the first year of the first five years the proposed amendments will be in effect, there will be no net fiscal implications for state government as a result of enforcing or administering the amendments. The fee increases implemented by the proposed amendments will be deposited into the OFCUF. Ms. Savage estimates that the proposed amendments implementing statutory changes will increase the revenue to the OFCUF by approximately $1.8 million in fiscal year 2004 and $1.67 million in fiscal year 2005. The increased revenue to the OFCUF will be used to cover the cost of plugging additional abandoned wells and for the cleanup of pollution.

The Commission also anticipates that the statutory increase in the fee to reissue a certificate of compliance that has been canceled as a result of violations will encourage operators to come into compliance in a more timely manner, thus reducing the amount of Commission field staff time and resources to achieve compliance. Currently, an operator can allow a lease to acquire multiple severance orders, but is required only to pay $100 to have the certificate of compliance reinstated once all rule violation issues have been resolved. If a lease has been severed by multiple sections of the Oil and Gas Division, then each of those sections must verify compliance and resolve cancellation issues. At times, this verification and resolution also requires a lease inspection. It is, therefore, appropriate that the fees required for reissuance of the certificate of compliance reflect the existence of multiple violations. Raising the reinstatement fee and charging for multiple severances on the same lease or well, as required by HB 1195, will encourage more timely compliance with the violation notices that precede severance imposition.

During the first year of implementation of the proposed amendments (fiscal year 2004), the Commission will expend money from the increased revenues for relatively minor document revision, process analysis and computer programming to implement new fees and changes to financial security requirements. The Commission anticipates that the statutory increase in the fee for reissuance of a certificate of compliance that has been canceled as a result of violations will encourage operators to come into compliance in a more timely manner, thus reducing the amount of Commission field staff time and resources to achieve compliance. The Commission believes these reductions in staff time and resources will offset the relatively small incremental expense of the proposed amendments in the first year of implementation. Any incremental increase in expenditures by the Commission for the first year of implementation will be funded through the OFCUF. As incremental expenditures decrease in subsequent years, increased revenues generated by the fee increases implemented by the proposed amendments will be available for well plugging and cleanup activity.

There will be no fiscal effect on local governments.

Texas Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic effect on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statutes under which the rule is to be adopted. Before adopting a rule that would have an adverse economic effect on small businesses, a state agency must prepare a statement of the effect of the rule on small businesses, which must include an anlysis of the cost of compliance with the rule for small businesses and a comparison of the cost with the cost of compliance for the largest businesses affected by the rule, using cost for each employee, cost for each hour of labor, or cost for each $100 of sales.

Ms. Savage has estimated that the cost of compliance with the proposed amendments to §3.78(b) and (c) for individuals, small businesses, or micro-businesses will be an increase in the fees for filing organization reports and fees for reissuance of certificates of compliance which have been canceled. The fee increases contained in the proposed amendments are statutory and reflect recent amendments to statutes enacted by the 78th Legislature (2003). The statutory provisions make no distinction in fees required to be paid based on an operator's status as an individual, small business, or micro-business. Because these fees are statutory, the Commission does not have authority to change the amount of the fees or to create exceptions to the imposition of the fees.

The proposed fee increase for reissuance of a certificate of compliance that previously has been canceled is in the amount of $200, assuming one severance or seal order. The proposed increase in the organization report fee for natural gas pipelines and liquids pipelines and the proposed increase in the aggregate organization report fee that must be paid by well operators who also have other activities is, in each case, $125.

Because operators are not required to make filings with the Commission reporting number of employees, labor costs, amount of sales, or gross receipts, the Commission cannot determine whether a particular operator may be a small business or a micro- business. However, the Commission has determined that it

is likely that some operators would meet the definitions of these terms in Texas Government Code, §2006.001. Assuming that an individual, small business, or micro-business operator incurs, during a given year, an additional $200 in fees for reissuance of a certificate of compliance, the annual cost of the proposed increase to such an entity would be $200 per employee if the entity has one employee, $10 per employee if the entity has 20 employees, and $2.02 per employee if the entity has 99 employees. Operators may avoid this fee by compliance with Commission rules.

Assuming that an individual, small business, or micro-business operator incurs, during a given year, an additional $125 in organization report fees, the annual cost of the proposed increase to such an entity would be $125 per employee if the entity has one employee, $6.25 per employee if the entity has 20 employees, and $1.26 per employee if the entity has 99 employees.

Comparable annual cost per employee of the proposed increase for the largest businesses affected by the proposed amendments required to pay one increased fee for reissuance of a certificate of compliance would be $0.40 for an employer of 500 persons and $0.20 for an employer of 1,000 persons. Assuming a requirement to pay one increased organization report fee during a given year, the annual cost per employee of the proposed increase would be $0.25 for an employer of 500 persons and $0.12 for an employer of 1,000 persons.

The number of wells operated, production, and gross receipts of small business and micro-business operators vary greatly from operator to operator. Most small business and micro-business operators have wells that are marginal producers. The Commission cannot specifically identify the universe of small business and micro-business operators from records maintained by the Commission, for the purpose of relating cost of compliance with the proposed amendments to the factors listed in Texas Government Code, §2006.002(c)(2).

However, most, if not all, applications filed with the Commission since September 1, 2001, for approval to file the nonrefundable annual fee of $1,000 as financial security have been filed by operators believed by the Commission to be in the small business or micro-business categories. Based on experience derived from processing these applications and production reports filed with the Commission for 2002, the Commission believes that the average micro-business operator who has filed such an application produces about 4,000 barrels of oil annually. Using the 2002 average domestic first purchase price of $21.84 per barrel of oil, 4,000 barrels of annual production generates gross sales of $87,360.

Assuming that the average micro-business operator incurs, during a given year, an additional $200 in fees for reissuance of a certificate of compliance as a result of the proposed fee change amendments, the cost of compliance to the operator would be about $0.23 per $100 of gross sales. It is not likely that micro-business operators will be affected by the proposed $125 increases in the organization report fee for operators of natural gas pipelines and liquids pipelines and the maximum organization report fee required of well operators with multiple Commission regulated activities.

Assuming further that the average small business operator has annual production and gross sales five times greater than the average micro-business producer, the cost of compliance to the average small business operator resulting from the need to pay, during a given year, an additional $200 in fees for reissuance of a certificate of compliance would be slightly more than $0.04 per $100 of gross sales. If the same small business operator were required to pay, during a given year, an additional $125 in organization report fees, the cost of compliance would be slightly less than $0.03 per $100 of gross sales. If a small business operator is an operator of one or more liquids pipelines as well as operator of other service activities or facilities, the proposed establishment of a separate organization report fee category for operators of liquids pipelines could result in an increase in total organization report fees of up to $625 annually. Based on the same assumed annual sales for the average small business operator, the cost of compliance would be $0.14 per $100 of gross sales.

The Commission does not have access to information regarding the gross sales of the largest operators affected by the proposed fee change amendments, most of whom have operations beyond the state. For comparative purposes, however, the cost of compliance with the proposed fee change amendments to these large operators would be a fraction of one cent per $100 of gross sales.

Ms. Savage has determined that the cost of compliance with the proposed amendments to §3.78(f) for individual, small business, or micro-business operators will be in the nature of employee or administrative expense associated with submitting a request to the Commission for a determination that bonds are not obtainable at a reasonable price, obtaining declination letters, establishing that the operator is otherwise eligible to file a nonrefundable annual fee of $1,000 as financial security, and participating in any Commission hearing that may be necessary in the event the operator's request is administratively denied.

Texas Natural Resources Code, §91.104 provides the various forms of financial security which may be filed by operators subject to the Commission's jurisdiction. Under §91.104, an operator may file financial security in the form of a nonrefundable annual fee of $1,000 if the Commission determines that individual and blanket bonds are not obtainable at reasonable prices and the operator can demonstrate to the Commission an acceptable record of compliance. The statute requires that the Commission make these determinations, and the Commission has no authority to exempt individual, small business, and micro-business operators from the standards of §91.104.

The Commission has determined that the proposed amendments to §3.78(f) provide standards and procedures for requesting Commission approval to file financial security in the form of the nonrefundable annual fee of $1,000 which impose only a minimal regulatory burden on operators. Operators will be required to determine from sureties or their agents whether bonds are obtainable at a reasonable price and obtain the required declination letters for submission to the Commission, but an operator's request to file the nonrefundable annual fee of $1,000 will be processed administratively, in most cases without the need for a hearing. The requesting operator may choose to submit evidence of its acceptable record of compliance, but the operator's record of compliance can also be determined from Commission records. A hearing will be required only in the case where the operator's request is administratively denied, and in the event a hearing is needed, the operator may request that the hearing be conducted by telephone.

The Commission has estimated that no more than eight hours will be spent by employees and administrative or managerial

staff of operators in meeting the standards and procedures provided by the amendments to §3.78(f), even if a telephone hearing following administrative denial of the operator's request is necessary. Assuming that individual, small business, and micro-business operators incur average hourly personnel cost of $25 per hour, the estimated cost of compliance with the proposed amendments to §3.78(f) should not exceed about $200 annually. The $1,000 nonrefundable annual fee is not deemed to be a cost of compliance with the proposed amendments to §3.78(f) because the fee is provided for by Texas Natural Resources Code, §91.104 and §3.78(d), and the fee provisions of §3.78(d) are not proposed to be amended.

Assuming that an individual, small business, or micro-business operator incurs expense in the amount of $200 to comply with the proposed amendments to §3.78(f), the annual per employee cost of compliance would be $200 for an operator with one employee, $10 for an operator with 20 employees, and $2.02 for an operator with 99 employees. Assuming further, based on the previous analysis, that the average micro-business operator has annual gross sales of $87,360, the estimated cost of compliance for the micro-business operator per $100 of gross sales would be $0.23. Assuming that the average small business operator has annual gross sales five times greater than the average micro-business operator, the estimated cost of compliance for the small business operator per $100 of gross sales would be $0.04.

The largest of the businesses regulated by the Commission tend to file financial security in the form of individual or blanket performance bonds, letters of credit, or cash deposits, and may not be affected by the proposed amendments to §3.78(f) relating to the nonrefundable annual fee of $1,000. Should a large business operator choose to request approval to file the nonrefundable annual fee of $1,000, the annual cost of compliance per employee would be $0.40 for an operator with 500 employees and $0.20 for an operator with 1,000 employees. Although the Commission does not have information as to the company-wide gross sales of the largest operators regulated by the Commission, the annual cost of compliance with the proposed amendments to §3.78(f) to such largest operators would be a fraction of one cent per $100 of gross sales.

The cost of compliance with the proposed amendments to §3.78(f) will be temporary since effective September 1, 2004, all operators, except those exempt from financial security requirements, will be required to file financial security in the form of an individual or blanket performance bond, letter of credit or cash deposit, and filing of a nonrefundable annual fee of $1,000 will no longer be permitted by statute.

The Commission has also determined that the cost of compliance with the proposed amendments to §3.78(f) will be offset by savings to operators realized through obtaining approval to file the nonrefundable annual fee of $1,000 as compared to other more costly forms of financial security permitted by statute.

Ms. Savage has determined that there will be no cost of compliance with the proposed amendments in §3.78(j)(4) exempting certain classes of operators from financial security requirements. For these classes of operators the current cost of compliance with current financial security requirements will be eliminated by the proposed amendments.

Ms. Savage has also determined that there will be no cost of compliance with the proposed amendment eliminating the individual well bond requirement of current §3.78(m). Some individual, small business, and micro-business operators will realize significant cost savings as a result of elimination of the requirement to file individual well bonds or individual letters of credit in order to obtain plugging extensions for wells that have been inactive for 36 months or more. For some of these operators, these cost savings will exceed the cost of compliance with the proposed fee increases.

Ms. Savage has also determined that there will be no cost of compliance with any of the clarifying amendments. These amendments reflect current Commission practices and policies and do not impose different or additional obligations on operators.

The nature of the proposed amendments to §3.78 are such that they will not have a materially adverse net economic effect on individual, small business, or micro-business operators.

James M. Doherty, Hearings Examiner, Oil and Gas Section, Office of General Counsel, has determined that for each year of the first five years that the amended section will be in effect, the public benefit will be the implementation of fee changes required or authorized by the Legislature, which will assist the Commission in plugging of abandoned wells and cleanup of pollution in the areas of greatest need. The public will also benefit from the greater flexibility and lesser regulatory burden resulting from proposed changes in standards and procedures for persons seeking approval to file a nonrefundable annual fee of $1,000 as financial security for their operations. These changes will enable operators with an acceptable record of compliance who are unable to obtain a bond at a reasonable price to continue production of oil and gas to the public's benefit. The public will also benefit from elimination of the regulatory and financial burden of posting financial security by certain classes of operators whose operations pose no significant risk to usable quality surface or subsurface water. The public will also benefit from the clarifying amendments by making the amended section more understandable and more reflective of current Commission policies and practices.

Comments may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P. O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 30 days after publication in the *Texas Register*. For further information, call James M. Doherty at (512) 463-7152. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html.

The Commission proposes the amendments to §3.78 pursuant to Texas Natural Resources Code, §§81.051, 81.052, 85.042, 85.201, 85.202, 86.041, 86.042, 91.101,141.011, and 141.012 which provide the Commission with jurisdiction over all persons owning or engaged in drilling or operating oil, gas or geothermal wells, persons owning or operating pipelines, and persons engaged in other service activities related to production, storage, transportation or distribution of oil and gas or oil and gas wastes, and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and pursuant to Texas Government Code, §2001.006, which authorizes the Commission to promulgate rules that implement legislation that has become law but has not taken effect.

Texas Natural Resources Code §§81.051, 81.052, 85.042, 85.167, 85.201, 85.202, 86.041, 86.042, 91.101, 91.103, 91.104, 91.1042, 91.109, 91.114, 91.142, 141.011, and 141.012 are affected by the proposed amendments.

Issued in Austin, Texas on July 17, 2003.

§3.78. Fees, Performance Bonds and Alternate Forms of Financial Security Required To Be Filed.

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

(1) - (6) (No change.)

[~~(7) Individual well bond A bond or letter of credit issued:~~]

[~~(A) on a Commission-approved form;~~]

[~~(B) by a third party surety, insurance company, or financial institution approved by the Commission; and~~]

[~~(C) to secure the timely and proper plugging of a specified well and remediation of the wellsite, in accordance with Commission rules.~~]

(7) [~~(8)~~] Bay well--Any well under the jurisdiction of the Commission for which the surface location is either:

(A) located in or on a lake, river, stream, canal, estuary, bayou, or other inland navigable waters of the state; or,

(B) located on state lands seaward of the mean high tide line of the Gulf of Mexico in water of a depth at mean high tide of not more than 100 feet that is sheltered from the direct action of the open seas of the Gulf of Mexico.

(8) [~~(9)~~] Land well--Any well subject to Commission jurisdiction for which the surface location is not in or on inland or coastal waters.

(9) [~~(10)~~] Offshore well--Any well subject to Commission jurisdiction for which the surface location is on state lands in or on the Gulf of Mexico, that is not a bay well.

(10) Officers and owners--Any persons owning or controlling an organization including officers, directors, general partners, sole proprietors, owners of more than 25% ownership interest, any trustee of an organization, and any person determined by a final judgment or final administrative order to have exercised control over the organization.

(11) Letter of credit--An irrevocable letter of credit issued:

(A) on a Commission-approved form;

(B) by and drawn on a third party bank authorized under state or federal law to do business in Texas; and

(C) renewed and continued in effect until the conditions of the letter of credit have been met or its release is approved by the Commission or its authorized delegate.

(12) Bond--A surety instrument issued:

(A) on a Commission-approved form;

(B) by and drawn on a third party corporate surety authorized under state law to issue surety bonds in Texas; and

(C) renewed and continued in effect until the conditions of the bond have been met or its release is approved by the Commission or its authorized delegate.

(b) Filing fees. The following filing fees are required to be paid to the Railroad Commission.

(1) (No change.)

(2) An application for a permit to drill, deepen, plug back, or reenter a well will be considered materially amended if the amendment is made for a purpose other than:

(A) to add omitted required information;

(B) to correct typographical errors; or

(C) to correct clerical errors.

(3) - (9) (No change.)

(10) If a certificate of compliance for an oil lease or gas well has been canceled, the operator shall submit to the Commission a nonrefundable fee of $300 for each severance or seal order issued for the well or lease [~~$100~~] before the Commission may reissue the certificate pursuant to §3.58 of this title (relating to Oil, Gas, or Geothermal Resource Producer's Reports) (Statewide Rule 58).

(11) - (13) (No change.)

(14) A check or money order for any of the aforementioned fees shall be made payable to the Railroad Commission of Texas. If the check accompanying an application is not honored upon presentment, the permit issued on the basis of that application, the allowable assigned, the exception to a statewide rule granted on the basis of the application, the extension of time to plug a well, the certificate of compliance reissued, or the Natural Gas Policy Act category determination made on the basis of the application may be suspended or revoked.

(15) (No change.)

(c) Organization Report Fee. An organization report required by Texas Natural Resources Code, §91.142, shall be accompanied by a fee as follows:

(1) (No change.)

(2) for an operator of one or more natural gas pipelines, $225 [~~$100~~];

(3) (No change.)

(4) for an operator of one or more liquids pipelines, $625;

(5) [~~(4)~~] for an operator of all other service activities or facilities, [~~including liquids pipelines,~~] $500;

[~~(5) for an operator of wells who also operates one or more service activities, facilities, or pipelines as classified by the Commission, the sum of the fees that would be separately charged for each category of service activity, facility, pipeline, or number or wells operated, provided that such fee shall not exceed $1,000; or~~]

(6) for an operator with multiple activities, a total fee equal to the sum of the separate fees applicable to each category of service activity, facility, pipeline, or number of wells operated shall be submitted, provided that the total fee for an operator of wells shall not exceed $1,125; and

(7) [~~(6)~~] for an entity not currently performing operations under the jurisdiction of the Commission, $300.

(d) Financial security and alternate forms of financial security. Any person, including any firm, partnership, joint stock association, corporation, or other organization, required by Texas Natural Resources Code, §91.142, to file an organization report with the Commission must also file financial security in one of the following forms:

(1) an individual performance bond;

(2) a blanket performance bond;

(3) a nonrefundable annual fee of $1,000, if:

(A) the Commission or its designee determines that individual and blanket performance bonds as specified by this section are not obtainable at reasonable prices as provided for under subsection (f) of this section;

(B) - (C) (No change.)

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

(e) Eligibility for nonrefundable $1,000 fee.

[~~(1) For the purposes of this subsection, "officers and owners" include directors, general partners, owners of more than 25% ownership interest, or any trustee of an organization.~~]

(1) [~~(2)~~] A person filing an organization report for the first time in order to perform any Commission-regulated operations is a new organization and is not eligible to file the nonrefundable fee of $1,000.

(2) [~~(3)~~] A person who filed an initial organization report less than 48 months prior to the current filing is not eligible to file the nonrefundable fee of $1,000.

(3) [~~(4)~~] A change in name, without any other organizational change, of a person registered with the Commission does not indicate a new organization. If the Commission determines that only a name change has occurred, then a person operating under a new name may file the nonrefundable fee of $1,000 if the person meets all other eligibility requirements.

(4) [~~(5)~~] An individual registered with the Commission as a sole proprietor or who is a general partner of a partnership that is registered with the Commission and who reorganizes his or her oil and gas operations under a new legal entity or establishes a new and separate entity will be considered to have satisfied the 48-month eligibility requirement for filing the nonrefundable fee of $1,000.

(5) [~~(6)~~] A surviving or new corporation or other entity resulting from a merger under the Texas Business Corporation Act, Part Five, may file the nonrefundable fee of $1,000 if:

(A) the existing record of compliance for each entity that is a party to the merger qualifies;

(B) the records of compliance for the officers and owners of the surviving or new entities qualify; and

(C) the number of surviving or new entities eligible does not exceed the number of parties registered with the Commission at the time of the merger.

(6) [~~(7)~~] In any Commission enforcement proceeding, if a person is determined not to be the responsible party for a violation and is dismissed from the proceeding for that reason, that violation shall not be considered in determining whether that person has an acceptable record of compliance.

(f) Availability of bonds.

(1) In determining the applicability of the $1,000 nonrefundable fee as provided for under this section, the Commission presumes that individual and blanket performance bonds are obtainable at reasonable prices.

(2) An operator may request an administrative determination [a ~~hearing to determine~~] that individual and blanket performance bonds are not available to that operator [~~obtainable~~] at reasonable prices. In order to support an administrative [~~a~~] determination that bonds are not obtainable by a requesting operator at reasonable prices, the operator must submit declination letters to the Commission's P-5/Financial Assurance Department establishing [~~show~~]:

(A) that [~~no fewer than~~] three companies from a list maintained by the Commission that [~~which~~] have issued a bond filed with the Commission in the past 12 months will not issue a bond to the requesting operator or will only issue a bond to the operator for an annual fee in excess of 6% [~~less than 12%~~] of the face amount of the bond; and

(B) that the operator is otherwise eligible under this section to file a $1,000 nonrefundable annual fee.

(3) If an operator requesting a determination that bonds are not available to it has a bond as its current financial assurance, one of the three declination letters must be from that operator's current surety.

(4) If an operator's application for the $1,000 nonrefundable fee is administratively denied, the operator may request a hearing to determine eligibility for the $1,000 nonrefundable fee. The Commission shall consider cash or other collateral requirements, along with the premium and any other surety company requirements, in determining if bonds are available to the requesting operator at a reasonable price.

(g) - (i) (No change.)

(j) Amount of bond, letter of credit, or cash deposit.

(1) (No change.)

(2) A person operating wells may file a blanket bond, letter of credit or cash deposit to cover all wells for which a bond, letter of credit or cash deposit is required in an amount equal to the sum of:

(A) A base amount determined by the total number of wells operated, as follows:

(i) a person who operates 10 or fewer wells [~~or performs other operations~~] shall have a base amount of $25,000;

(ii) - (iii) (No change.)

(B) - (C) (No change.)

(3) A person [~~operating wells and~~] performing other operations who is not an operator of wells and who is not a person whose only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser or well plugger choosing [~~, who chooses~~] to cover all operations by a blanket performance bond, letter of credit or cash deposit shall file a bond, letter of credit or cash deposit in the amount of $25,000 [~~an amount determined by the total number of wells, but not less than $25,000. Only one blanket performance bond, letter of credit or cash deposit is required for a person performing multiple operations, unless the person is operating a commercial facility subject to the financial security requirements of subsection (p) of this section~~].

(4) No bond, letter of credit, cash deposit or alternate form of financial security is required of a person who is not an operator of wells if the person's only activity is as a first purchaser, survey company, salt water hauler, gas nominator, gas purchaser and/or well plugger.

(5) A person who engages in more than one activity or operation, including well operation, for which a bond or alternate form of financial security is required is not required to file a separate bond or alternate form of financial security for each activity or operation in which the person is engaged. The person is required to file a bond or alternate form of financial security only in the amount required for the activity or operation in which the person engages for which a bond or alternate form of financial security in the greatest amount is required. The bond or alternate form of financial security filed covers all of the activities and operations for which a bond or alternate form of financial

security is required. The provisions of this paragraph do not exempt a person from the financial security required under subsection (o) of this section.

(6) [~~(4)~~] Financial security amounts are the minimum amounts required by this section to be filed. A person may file a greater amount if desired.

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

[~~(m) Individual well bonds.~~]

[~~(1) An operator who has filed an alternate form of financial security with the Commission and who applies for a plugging extension for a well that has been inactive for more than 36 months is required under §3.14 of this title (relating to Plugging) to file an individual well bond or individual well letter of credit in the face amount of the estimated plugging cost of the well for which a plugging extension is requested. The Commission shall presume that the estimated plugging cost for wells for which a plugging extension is sought is as follows:~~]

[~~(A) for land wells, the product of the total depth of the well multiplied by $3 per foot;~~]

[~~(B) for bay wells, $60,000; and,~~]

[~~(C) for offshore wells, $250,000.~~]

[~~(2) An operator may rebut the presumed estimated plugging costs for a specific well for which a plugging extension is sought at hearing by clear and convincing evidence establishing a higher or lower prospective plugging cost for the well. The operator, Commission staff, or any owner of the surface or mineral estate on which the well is located may initiate a hearing on the prospective plugging cost for a well for the purpose of setting the amount of an individual well bond by filing a request for hearing.~~]

[~~(3) If an individual well bond is required, it shall be continuously maintained until the well is plugged or returned to active operation, as defined under §3.14, unless the operator files financial security as provided by this section.~~]

(m) [~~(n)~~] Well or lease transfer.

(1) The Commission shall not approve a transfer of operatorship submitted for any well or lease unless the operator acquiring the well or lease has on file with the Commission one of the following approved forms of financial security in an amount sufficient to cover both its current operations and the wells being transferred:

(A) an individual performance bond, letter of credit or cash deposit; or

(B) a blanket performance bond, letter of credit or cash deposit.

(2) Any existing financial security or individual well bond covering the well or lease proposed for transfer shall remain in effect and the prior operator of the well remains responsible for compliance with all laws and Commission rules covering the transferred well until the Commission approves the transfer.

(3) A transfer of a well or lease from one entity to another entity under common ownership is a transfer for the purposes of this section.

(4) An operator who has accepted a transfer of operatorship of any well or lease on or after September 1, 2001, with Commission approval based on filing of an individual or blanket performance bond, letter of credit, or cash deposit is deemed to have elected to file one of these forms of financial security and shall file one of these forms of financial security for each successive year during which it remains the designated operator of any such well or lease.

(n) [~~(o)~~] Reimbursement liability. Filing any form of financial security does not extinguish a person's liability for reimbursement for the expenditure of state oilfield clean-up funds pursuant to the Texas Natural Resources Code, §89.083 and §91.113.

(o) [~~(p)~~] Financial security for commercial facilities. The provisions of this subsection shall apply to the holder of any permit for a commercial facility.

(1) Application.

(A) New permits. Any application for a new or amended commercial facility permit filed after the original effective date of this subsection shall include:

(i) a written estimate of the maximum dollar amount necessary to close the facility prepared in accordance with the provisions of paragraph (4) of this subsection that shows all assumptions and calculations used to develop the estimate;

(ii) a copy of the form of the bond or letter of credit that will be filed with the Commission; and

(iii) information concerning the issuer of the bond or letter of credit as required under paragraph (5) of this subsection including the issuer's name and address and evidence of authority to issue bonds or letters of credit in Texas.

(B) Existing permits. Within 180 days of the original effective date of this subsection, the holder of any commercial facility permit issued on or before the original effective date of this subsection shall file with the Commission the information specified in subparagraph (A)(i)-(iii) of this paragraph.

(2) Notice and hearing.

(A) New permits. For commercial facility permits issued after the original effective date of this subsection, the provisions of §3.8 or §3.57 of this title (relating to Water Protection; and Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials), as applicable, regarding notice and opportunity for hearing, shall apply to review and approval of financial security proposed to be filed to meet the requirements of this subsection.

(B) Existing permits. Notice of filing of information required under paragraph (1)(B) of this subsection shall not be required. In the event approval of the financial security proposed to be filed for a commercial facility operating under a permit in effect as of the original effective date of this subsection is denied administratively, the applicant shall have the right to a hearing upon written request. After hearing, the examiner shall recommend a final action by the Commission.

(3) Filing of instrument.

(A) New permits. A commercial facility permitted after the original effective date of this subsection may not receive oil field fluids or oil and gas waste until a bond or letter of credit in an amount approved by the Commission or its delegate under this subsection and meeting the requirements of this subsection as to form and issuer has been filed with the Commission.

(B) Existing permits. Except as otherwise provided in this subsection, after one year from the original effective date of this section, a commercial facility permitted on or before the original effective date of this subsection may not continue to receive oil field fluids or oil and gas waste unless a bond or letter of credit in an amount approved by the Commission or its delegate under this subsection and

meeting the requirements of this subsection as to form and issuer has been filed with and approved by the Commission or its delegate.

(C) Extensions for existing permits. On written request and for good cause shown, the Commission or its delegate may authorize a commercial facility permitted before the original effective date of this subsection to continue to receive oil field fluids or oil and gas waste after one year after the original effective date of this section even though financial security required under this subsection has not been filed. In the event the Commission or its delegate has not taken final action to approve or disapprove the amount of financial security proposed to be filed by the owner or operator under this subsection one year after the original effective date of the section, the period for filing financial security under this subsection is automatically extended to a date 45 days after such final Commission action.

(4) Amount.

(A) Except as provided in subparagraphs (B) or (C) of this paragraph, the amount of financial security required to be filed under this subsection shall be an amount based on a written estimate approved by the Commission or its delegate as being equal to or greater than the maximum amount necessary to close the commercial facility, exclusive of plugging costs for any well or wells at the facility, at any time during the permit term in accordance with all applicable state laws, Commission rules and orders, and the permit, but shall in no event be less than $10,000.

[~~(B) The owner or operator of a commercial facility may reduce the amount of financial security required under this subsection by $25,000 if the owner or operator holds only one commercial facility permit.~~]

(B) [~~(C)~~] The owner or operator of one or more [~~than one~~] commercial facilities [~~facility~~] may reduce the amount of financial security required under this subsection for one such facility by the amount, if any, it filed as financial assurance under subsection (j)(3) of this section [~~$25,000~~]. The full amount of financial security required under subparagraph (A) of this paragraph shall be required for the remaining commercial facilities.

(C) [~~(D)~~] Except for the facilities specifically exempted under subparagraph (D) of this paragraph [~~(E)~~], a qualified professional engineer licensed by the State of Texas shall prepare or supervise the preparation of a written estimate of the maximum amount necessary to close the commercial facility as provided in subparagraph (A) of this paragraph. The owner or operator of a commercial facility shall submit the written estimate under seal of a qualified licensed professional engineer to the Commission as required under paragraph (1) of this subsection.

(D) [~~(E)~~] A facility permitted under §3.57 of this title (relating to Reclaiming Tank Bottoms, Other Hydrocarbon Wastes, and Other Waste Materials) that does not utilize on-site waste storage or disposal that requires a permit under §3.8 of this title (relating to Water Protection) is exempt from subparagraph (C) [~~(D)~~] of this paragraph.

(E) [~~(F)~~] Notwithstanding the fact that the maximum amount necessary to close the commercial facility as determined under this paragraph is exclusive of plugging costs, the proceeds of financial security filed under this subsection may be used by the Commission to pay the costs of plugging any well or wells at the facility if the financial security for plugging costs filed with the Commission is insufficient to pay for the plugging of such well or wells.

(5) (No change.)

(p) Effect of outstanding violations.

(1) Except as provided in paragraph (2) of this subsection, the Commission shall not accept an organization report or an application for a permit or approve a certificate of compliance for an oil lease or gas well submitted by an organization if:

(A) the organization has outstanding violations; or

(B) an officer or director of the organization was, within seven years preceding the filing of the report, application, or certificate, an officer or director of an organization and during that period, the organization committed a violation that remains an outstanding violation.

(2) The Commission shall accept a report or application or approve a certificate filed by an organization covered by paragraph (1) of this subsection if:

(A) the conditions that constituted the violation have been corrected or are being corrected in accordance with a schedule agreed to by the organization and the Commission;

(B) all administrative, civil, and criminal penalties, and all plugging and cleanup costs incurred by the state relating to those conditions have been paid or are being paid in accordance with a schedule agreed to by the organization and the Commission; and

(C) the report, application or certificate is in compliance with all other requirements of law and Commission rules.

(3) All fees tendered in connection with a report or application that is rejected under this subsection are nonrefundable.

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

Filed with the Office of the Secretary of State on July 18, 2003.

TRD-200304357
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 475-1295

CHAPTER 5. RAIL DIVISION

SUBCHAPTER C. RAIL SAFETY PROGRAM

16 TAC §5.301

The Railroad Commission of Texas proposes new §5.301, relating to Rail Safety Program Fee, in Chapter 5, new subchapter C, relating to the rail safety program. The purpose of the proposed new section is to provide a reasonable fee to be assessed annually against railroads operating within the state, as required by Section 11, House Bill (HB) 3442, 78th Legislature, Regular Session (2003), which adds new Section 2 to Article 6448a, Revised Statutes.

The statute provides that the Commission may consider gross ton miles for railroad operations in the state to provide for the equitable allocation among railroads of the cost of administering the Commission's rail safety program. The larger railroads generate more gross ton miles per year than the smaller railroads. Because a fee based on gross ton miles will ensure that a smaller railroad will pay a smaller fee than a larger railroad, in proportion to the each railroad's annual gross ton miles, the Commission

finds that assessing the fee based on gross ton miles will assure that the fees are equitably allocated among the railroads.

Proposed new §5.301(a) provides that each railroad operating within the state must pay an annual fee.

Proposed new §5.301(b) provides that each railroad operating within the state must report to the Commission, no later than July 1st of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report must be in writing, signed by a duly authorized officer of the railroad, and must be verified.

Proposed new §5.301(c) defines the term "gross ton miles" to mean either the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or, if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state; or, if a railroad is not required to file a Form R-1 with the USSTB, and if determining that railroad's actual calendar year gross ton miles is unduly burdensome, the railroad's good-faith estimate of gross ton miles as defined in proposed new §5.301(c)(1).

Proposed new §5.301(d) provides that the Commission must determine the annual fee for each railroad operating in the state as follows: (1) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads operating in the state; and (2) the result will be multiplied by the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

Proposed new §5.301(e) provides that the Commission must, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

Proposed new §5.301(f) provides that each railroad operating in the state must, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment must be made payable to the State of Texas and will be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(e), or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given pursuant to proposed §5.301(e), and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

Proposed §5.301(g) provides that if a railroad does not timely report its gross ton miles, the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles will constitute a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

Proposed §5.301(h) provides that fees collected under this section must be deposited to the credit of the general revenue fund to be used for the rail safety program.

Proposed new §5.301(i) provides that its provisions will control during the period beginning on the effective date of this section and ending on May 10, 2004. The definition of "gross ton miles" in proposed new subsection (c) applies to subsection (i).

Proposed §5.301(i)(1) requires each railroad operating within the state that is required to report its gross ton miles to the USSTB to report to the Commission, no later than October 15, 2003, the railroad's gross ton miles for calendar year 2002. The report must be signed in writing, signed by a duly authorized officer of the railroad, and must be verified. The Commission will then determine the annual fee of each such railroad operating in the state as follows: each such railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under proposed §5.301(i)(1) for calendar year 2002, and the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003. The Commission must, no later than November 1, 2003, notify each such railroad of the amount of the railroad's annual fee that is due and payable. Each such railroad must, no later than December 31, 2003, pay the fee to the Commission as provided in proposed new §5.301(f), except that the Commission will consider the payment to be timely made if it is received by the Commission on or before December 31, 2003, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before December 31, 2003, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

Proposed §5.301(i)(2) requires each railroad operating within the state that is not required to report its gross ton miles to the USSTB to report to the Commission, no later than February 1, 2004, the railroad's gross ton miles for calendar year 2002. The report must be in writing, signed by a duly authorized officer of the railroad, and must be verified. The Commission will then determine the annual fee of each such railroad operating in the state as follows: each such railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under proposed §5.301(i)(2) for the calendar year 2002, and the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003. The Commission must, no later than March 1, 2004, notify each such railroad of the amount of the railroad's annual fee that is due and payable. Each such railroad must, no later than April 30, 2004, pay the fee to the Commission as provided in proposed §5.301(f), except that the Commission will consider the payment to be timely made if it is received by the Commission on or before April 30, 2004, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before April 30, 2004, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service will be prima facie evidence of the date of mailing.

Jerry Martin, Director, Rail Division, has determined that for each year of the first five years the proposed new section will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the new section. Currently there are 41 railroads operating within the state. Due to this limited number of railroads that will be required to report gross ton miles and pay the fee, the Commission does not expect to incur any additional expense in determining and assessing the fees because current Commission resources, e.g., offices, staff,

and fees received under the proposed rule, will be adequate for the Commission to meet its undertaking pursuant to proposed new §5.301.The fees collected, estimated to be approximately $1,574,552 for the fiscal year beginning September 1, 2003, will total the estimated cost of administering the Commission's rail safety program. There are no fiscal implications for local governments.

Mr. Martin has also determined that for each year of the first five years the new section is proposed to be in effect, the public benefit will be continued rail safety oversight throughout the state at the expense of the railroads operating in the state.

There are some anticipated costs to small businesses and micro-businesses required to comply with the new section. As a result of the proposed rule, each railroad operating in the State of Texas will be required to report its annual gross ton miles to the Commission and to pay a fee based on gross ton miles. The Commission estimates that the three largest railroads operating in Texas, which are neither small businesses nor micro- businesses, will pay approximately 95% of the total fees. These railroads currently report their national gross ton miles annually to the federal government; they also break out their annual gross ton miles for Texas. The smaller railroads do not currently report gross ton miles to any regulatory agency and may incur an administrative cost in calculating and reporting that figure to the Commission. However, the smaller railroads will pay a significantly smaller fee; the Commission estimates that the 38 smaller railroads will together pay only approximately 5% of the total fee. Further, if determining annual gross ton miles is too burdensome for a smaller railroad, it may make a good faith estimate of its gross ton miles or may allow the Commission to make an estimate.

The Commission considered establishing a flat fee for the smaller railroads, but due to the diversity in size of the smaller railroads, the Commission determined that a flat fee would be unduly burdensome on the smallest railroads. The Commission considered a complete exemption from proposed new §5.301, but determined that an exemption would not comply with Section 11, HB 3442, 78th Legislature, Regular Session (2003), which calls for an equitable allocation among the railroads of the cost of the rail safety program.

Pursuant to Texas Government Code, §2006.002(c), the Commission cannot determine the cost for each small business or micro-business operating a railroad in the state because a railroad's costs associated with compliance will vary depending on the railroad's gross ton miles. The Commission assumes that there are railroads that meet the definitions of "micro-business" and "small business" set forth in Texas Government Code, §2006.001(1) and (2), respectively; however, the Commission does not have data showing the expense for each employee, the expense for each hour of labor, or the total sales revenue for each railroad in the state. Therefore, the Commission is not able to determine the exact cost of compliance based on the cost for each employee, the cost for each hour of labor, or the cost for each $100 of sales pursuant to Texas Government Code, §2006.002(c). However, the proposed rule provides that the amount of the fee to be paid annually by a railroad will be proportional to the amount of gross ton miles reported by that railroad versus the total amount reported by all railroads. Proposed §5.301(i) will also grant smaller railroads additional time to file their first annual report of their gross ton miles and to pay their first annual fee. Further, Section 11 of HB 3442, 78th Legislature, Regular Session (2003), requires that the fees be reasonable, that the total amount of the fees collected shall not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the rail safety program, and that the Commission provide for the equitable allocation of the cost among the railroads. These statutory requirements ensure that small business and micro-business railroads will pay significantly smaller fees than the largest businesses required to pay the fee. Therefore, the statute reduces the adverse effect the proposed new rule could have on individuals, small businesses, or micro-businesses. The proposed rule also allows the smaller railroads to estimate their annual gross ton mileage, thus reducing to some extent the cost of compliance that is not the fee itself. Because the fees are statutory, the Commission does not have authority to further reduce the adverse effect of the proposed rule on small or micro- businesses. Thus, pursuant to Texas Government Code, §2006.002, the Commission finds that, considering the purpose of Section 2 of Article 6448a, Revised Statutes, as enacted by Section 11 of HB 3442, 78th Legislature, Regular Session (2003), any adverse effect the proposed new rule could have on individuals, small businesses, or micro-businesses has been reduced by the proposed rule to the extent authorized by the statute.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.html; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments for 21 days after publication in the *Texas Register*; comments should refer to Rail Docket No. 3762.RUL. The Commission encourages all persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Martin at (512) 463-7001. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.html

The Commission particularly encourages comments on the proposed methodology for calculating the annual fee for the smaller railroads. The comment period is limited to 21 days because the Commission has a fiscal responsibility to have a rule in place before the fiscal year that begins September 1, 2003.

To provide actual notice of the proposed rule to all members of the affected industry, the Commission plans to deliver a copy of the proposed rule to every railroad operating in the state, on or about July 17, 2003. The proposed rule will also be posted on the Commission's web site on approximately July 17, 2003, well in advance of publication in the *Texas Register*. In addition, the Commission mailed a letter on July 9, 2003, to every railroad operating in the state informing the railroads that the Commission may consider the proposed rule that establishes a fee based on gross ton miles. Persons may submit comments to the Commission prior to the date the proposal is published in the *Texas Register*.

The Commission proposes new §5.301 under Section 2, Article 6448a, Revised Statutes, as enacted by Section 11, HB 3442, 78th Legislature, Regular Session, 2003, which requires the Commission by rule to adopt reasonable fees to be assessed annually against railroads operating within the state and further requires that the total amount of fees estimated to be collected may not exceed the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program. The legislation provides

that the Commission may consider gross ton miles for railroad operations within the State of Texas to provide for the equitable allocation among railroads of the cost of administering the rail safety program and that collected fees be deposited to the credit of the general revenue fund to be used for the rail safety program. Finally, the Commission proposes this new rule under the authority of Texas Government Code, §2001.006, which authorizes the Commission to promulgate rules to implement legislation that has become law but has not taken effect.

Statutory authority: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003; Texas Government Code, §2001.006.

Cross reference to statute: Section 2, Article 6448a, Revised Statutes, as added by HB 3442, 78th Legislature, Regular Session, 2003.

Issued in Austin, Texas on July 17, 2003.

§5.301. Rail Safety Program Fee.

(a) Each railroad operating within the state shall pay an annual fee as provided by this section.

(b) Each railroad operating within the state shall report to the Commission, no later than July 1 of each calendar year, the railroad's gross ton miles for the preceding calendar year. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.

(c) As used in this section, "gross ton miles" means:

(1) the combined weight of all rail cars and their contents, exclusive of locomotives, multiplied by the number of miles traveled in the state within a calendar year; or

(2) if a railroad has reported its calendar year gross ton miles on a Form R-1 filed with the United States Surface Transportation Board (USSTB), that portion of the reported gross ton miles that are for operations within the state; or

(3) if a railroad is not required to file a Form R-1 with the USSTB, and if determining the railroad's actual calendar year gross ton miles is unduly burdensome, the railroad's good-faith estimate of gross ton miles as defined in paragraph (1) of this subsection.

(d) The Commission shall determine the annual fee for each railroad operating in the state as follows:

(1) each railroad's gross ton miles will be divided by the total gross ton miles of all railroads operating in the state; and

(2) the result will be multiplied by the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the next state fiscal year.

(e) The Commission shall, no later than September 1 of each calendar year, notify each railroad operating in the state of the amount of that railroad's fee that is due and payable.

(f) Each railroad operating in the state shall, no later than November 1 of each calendar year, pay its assessed fee to the Commission. The payment shall be made payable to the State of Texas and shall be considered by the Commission to be timely made if it is received by the Commission on or before November 1 of the same calendar year in which notice has been given pursuant to subsection (e) of this section, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before November 1 of the same calendar year in which notice has been given, pursuant to subsection (e) of this section, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(g) If a railroad does not timely report its gross ton miles, the Commission may make a good-faith estimate of the railroad's gross ton miles and assess the railroad's fee based on that estimate. Failure by a railroad to timely report its gross ton miles constitutes a waiver by the railroad to object to both the Commission's estimate and the fee based on the estimate.

(h) Fees collected under this section shall be deposited to the credit of the general revenue fund to be used for the rail safety program.

(i) This subsection controls during the period beginning on the effective date of this section and ending on May 10, 2004. The definition of "gross ton miles" in subsection (c) of this section applies to this section.

(1) This paragraph applies to each railroad operating within this state that is required to report its gross ton miles to the USSTB.

(A) Each railroad shall report to the Commission, no later than October 15, 2003, the railroad's gross ton miles for the calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the railroad, and shall be verified.

(B) The Commission shall determine the annual fee of each railroad operating in the state as follows:

(i) each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for calendar year 2002; and

(ii) the result will be multiplied by 95% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

(C) The Commission shall, no later than November 1, 2003, notify each railroad of the amount of the railroad's annual fee that is due and payable.

(D) Each railroad shall, no later than December 31, 2003, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before December 31, 2003, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before December 31, 2003, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

(2) This paragraph applies to each railroad operating within this state that is not required to report its gross ton miles to the USSTB.

(A) Each railroad shall report to the Commission, no later than February 1, 2004, the railroad's gross ton miles for calendar year 2002. The report shall be in writing, signed by a duly authorized officer of the operator, and shall be verified.

(B) The Commission shall determine the annual fee of each such railroad operating in the state as follows:

(i) each railroad's gross ton miles for calendar year 2002 will be divided by the total gross ton miles reported by all railroads under this paragraph for the calendar year 2002; and

(*ii*) the result will be multiplied by 5% of the amount estimated by the Commission to be necessary to recover the costs of administering the Commission's rail safety program for the state fiscal year that begins on September 1, 2003.

(C) The Commission shall, no later than March 1, 2004, notify each railroad of the amount of the railroad's annual fee that is due and payable.

(D) Each railroad shall, no later than April 30, 2004, pay the fee to the Commission as provided in subsection (f) of this section, except that the Commission shall consider the payment to be timely made if it is received by the Commission on or before April 30, 2004, or is sent to the Commission by first-class United States mail in an envelope properly addressed, stamped, and postmarked on or before April 30, 2004, and received by the Commission not more than 10 days later. A legible postmark affixed by the United States Postal Service shall be prima facie evidence of the date of mailing.

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

Filed with the Office of the Secretary of State on July 17, 2003.

TRD-200304332
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 475-1295

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER Q. SYSTEM BENEFIT FUND

16 TAC §§25.451, 25.454, 25.457

The Public Utility Commission of Texas (commission) proposes amendments to §25.451, relating to Administration of the System Benefit Account; §25.454 relating to Rate Reduction Program; and §25.457, relating to Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives. The commission has administered the System Benefit Fund (SBF) and has contracted for administration of the Low-Income Discount Program for over a year. As a result of the experience gained during this time, the commission has determined that several improvements to the rules could benefit retail customers, the accountability of SBF, and the Low-Income Discount Program. Project Number 27711 is assigned to this proceeding.

The primary goal of these amendments is to ensure that the low-income discount rules and practices are consistent and enforceable, guide the proper administration of the SBF and Rate Reduction Program, and allow for the creation of a customer based eligibility matching process for the Rate Reduction Program. The proposed amendments to §25.451 are largely clarifying changes and changes to conform the rule to current law. Proposed amendments to §25.457 are largely clarifying changes. The commission proposes the amendments to §25.454 in response to concerns that the current rule does not adequately reflect actual practices, that customers who may not be eligible for the program are receiving rate reductions, and that current processes are leading to both retail electric provider (REP) and customer confusion.

The commission recommends three main changes to §25.454, in addition to minor clarifications, to better conform the rule language to the practical application of the rate reduction program. First, the commission proposes that direction for the Low-Income Discount Program within §25.454 should be general and should allow for a Low-Income Discount Procedural Guide. The commission proposes that a working guide is the most practical place to specify the detailed processes of the Low-Income Discount Program because it will allow the rule to provide broad direction for the program but still permit process changes and refinements by the Low-Income Discount Administrator (LIDA) and Retail Electric Providers (REPs) to meet statutory obligations and the needs of the customers. The guide will also ensure that the commission's directives for a customer based eligibility matching process can be designed in coordination with practical application of systems and business processes. The commission intends to seek input from all stakeholders in the development and adoption of the guide through the use of workshops, meetings, and solicitation of comments. If, and to the extent that the adoption of the guide requires APA notice and comment, the commission will follow those procedures.

The main process change that the commission proposes to be addressed in the Low-Income Discount Procedural Guide is the removal of the Electric Reliability Council of Texas (ERCOT) data from the monthly matching process. The commission proposes the change because the current matching process does not provide sufficient accountability of the end-use customer for the Low-Income Discount Program due to the fact that ERCOT maintains premise-specific rather than customer-specific information. The result of the premise-based eligibility matching process is a potential that rate reductions are being applied to premises at which eligible customers no longer reside, and to premises at which the electric customer is not the person who receives Texas Department of Human Services (TDHS) benefits. The process has also resulted in customer confusion when customers receive a discount for which they did not sign up or fail to receive a discount for which they did sign up. These problems result in customer complaints and time-consuming efforts by the REPs, ERCOT, the LIDA, and the commission. The commission proposes that ERCOT's premise-specific data for the monthly matching process be replaced by customer and premise data submitted by the REPs who serve residential customers. With this information, the LIDA would be able to utilize customer information in the eligibility matching process to ensure that eligibility could not be granted to ineligible customers and would be able to identify more easily the reasons that applicants may not be successfully enrolled in the program. Additionally, by increasing the information in the LIDA database, the synchronization of the electric and telephone discount programs could be better accomplished when the telephone discount enrollment is integrated into the Low-Income Telephone and Electric Utility Program (LITE-UP).

Second, the commission proposes that language regarding the discount rate and discount amounts be amended to describe the calculation and application of rate reductions. The current language of §25.454(d) has proven to be confusing to REPs during the first year of implementation. This led to varying applications

of the discount, which were both difficult to audit and confusing to the customers. To standardize discounts, the commission has determined that it is necessary for REPs to use the discount credits posted on the commission's website to calculate the rate reductions and for the REPs to identify the rate reduction as a line item on their eligible customers' electric bills.

Third, the commission proposes that the eligibility period for self-certified customers should be seven months and that the eligibility period for automatic enrollment customers should be the length of their TDHS program eligibility plus a grace period. The commission proposes the change because the current eligibility period of 13 months for both self-certified and automatically enrolled customers is not consistent with the eligibility periods of programs administered by TDHS, which currently serve as the basis for automatic enrollment. Such an inconsistency may result in ineligible customers receiving a discount. The commission proposes that both the self-certification and automatic enrollment eligibility periods conform to TDHS program eligibility plus a grace period. The commission finds that reducing the eligibility periods of both self-certification and automatic enrollment customers, while allowing renewal for customers who continue to be eligible, will ensure that all customers who are enrolled in the program are in fact eligible.

Lauren Clark, Analyst, Electric Division 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 local government as a result of enforcing or administering the section; there is no foreseeable direct or indirect implication for costs or revenues for local governments. Ms. Clark has determined that the state government will save money as a result of ineligible customers being removed from the enrollment lists. The specific savings amount cannot be determined until testing of the new process is complete. However, even if less than 2.0% of customers have moved and not informed LIDA or have submitted an address to TDHS at which they do not reside, there would be approximately 10,000 enrolled premises with ineligible electric customers. Assuming these customers received about $116 a year in discounts (approximate savings with a 10% discount at today's rates), SBF could save $1.16 million for a 12 month period by not serving these ineligible customers.

Ms. Clark has determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing these sections will be certainty that only eligible low-income electric customers will receive discounts and the economic savings associated with preventing ineligible customers from receiving the discounts. Ms. Clark has also determined that while the short term effect of the change in matching processes will produce a clean-up effect and therefore a potential decline in enrollment, the long term ability to use customer data with the integration of the telephone and electric discounts will allow for an increased likelihood that eligible customers can be efficiently enrolled to receive both discounts. Additionally, the workaround and problem-solving efforts currently undertaken by REPs, LIDA, and the commission should decrease in the long term as the matching process is improved, which will produce a direct benefit to the eligible customers and applicants.

As part of this proceeding, the commission requested that REPs that serve low-income residential customers provide estimated costs of complying with the proposed rule. Based on the self-reported cost estimates, there would be economic costs to persons who are required to comply with the proposed section. The implementation costs would be the result of the development and testing of residential customer file extracts and automated file uploads from REPs to the LIDA; in addition, two REPs estimated ongoing operational costs. The costs are likely to vary from business to business and are difficult to ascertain. REPs that are large businesses typically serve more low-income customers than the REPs that are small businesses and micro-businesses. Based on the estimates provided by REPs, the implementation cost will be, per low-income customer, between $0.50 and $3.25. Because the costs per low-income customer will be comparable for all REPs, and because larger REPs serve more low-income customers than small business REPs and micro-business REPs, the economic cost for a REP that qualifies as a small business or a micro-business will be proportionately lower than the economic costs to the larger businesses. Although REPs would incur operational costs, once they have implemented the systems required to comply with the proposed rule, it is anticipated operational costs will be low. Further, it is believed that the benefits accruing from implementation of the proposed section will partially or completely outweigh these costs. These benefits will accrue from the savings to SBF, the more efficient enrollment of customers into both telephone and electric discount programs, and the decreased workaround time.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Tuesday, September 16, 2003. The request for a public hearing must be received no later than September 2, 2003.

Comments on the proposed amendments (16 copies) may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, PO Box 13326, Austin, Texas 78711-3326. The deadline for submission of comments is September 2, 2003. Reply comments are due by September 9, 2003. Comments should be organized in a manner consistent with the organization of the proposed rules. The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 27711.

In addition to the proposed amendments, the commission requests comments on the following question:

Should the Low-Income Discount Procedural Guide be approved by the Executive Director or the Commissioners?

These amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.903 which requires the commission to review and approve system benefit fund accounts, projected revenue accounts, proposed nonbypassable fees, to adopt rules providing for enrollment of customers eligible to receive reduced rates under PURA §39.903(h), to adopt rules for a

retail electric provider to determine a reduced rate, and to adopt rules providing for reimbursement.

Cross Reference to Statutes: Public Utility Regulatory Act §§39.106, 39.352, 39.262, 39.901, 39.903, 40.053, 40.057, 41.053, and 41.057

§25.451. Administration of the System Benefit Fund [~~Account~~].

(a) Purpose. The purpose of this section is to implement the system benefit fund[~~account~~], including its administration, establishment of a revenue requirement, fee collection, reporting procedures, and review and approval of the fund [~~accounts~~] pursuant to the Public Utility Regulatory Act (PURA) §39.901 and §39.903.

(b) Application. Except as provided in PURA §39.102(c), this subchapter applies to electric utilities, retail electric providers (REPs), REPs [~~retail electric providers~~] pursuant to PURA §39.352(g), and transmission and distribution utilities (TDUs). This section applies to municipally owned electric utilities and electric cooperatives no sooner than six months preceding the date on which a municipally owned electric utility or an electric cooperative implements customer choice in its certificated service area.

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

[~~(1) Electric cooperative (Coop)--As defined in §25.5 of this title (relating to Definitions).~~]

[~~(2) Electric utility--As defined in PURA §31.002(6).~~]

(1) [~~(3)~~] Fiscal year--The State of Texas fiscal year, beginning [~~starting on~~] September 1 of one [a] calendar year, and ending on August 31 of the subsequent calendar [~~next~~] year.

[~~(4) Low-income customer--For the purposes of rate reduction program, as defined in §25.454(c) of this title (relating to the Rate Reduction Program). For the purposes of targeted weatherization programs, as defined in §25.453(f) of this title (relating to Targeted Energy Efficiency Programs).~~]

[~~(5) Retail customer--As defined in PURA §31.002(16).~~]

[~~(6) Retail electric provider (REP)--As defined by PURA §31.002(17).~~]

(2) [~~(7)~~] System Benefit Fund [~~benefit account~~]--A fund [~~An account~~] with the Texas Comptroller of Public Accounts (Comptroller) to be administered by the commission, into which all fee collections are deposited and from which all disbursements of the fund are withdrawn.

(3) [~~(8)~~] System benefit fee--A nonbypassable fee set by the commission to finance the System Benefit Fund [~~system benefit account~~]. The fee shall be charged to electric retail customers based on the amount of kilowatt hours (kWh) of electric energy used, as measured at the meter and adjusted for voltage level losses.

[~~(9) Transmission and distribution utility (TDU)--As defined in PURA §31.002(19).~~]

(d) System benefit fee.

(1) The commission shall set the amount of the system benefit fee for the next fiscal year at or before the last open meeting scheduled for July of each year.

(2) The amount of the fee shall [~~will~~] be based on the total revenue requirement as determined in subsection (e) of this section and the projected retail sales of electricity in megawatt hours (MWh) in the state as determined in subsection (f) of this section.

(3) The commission may, at any time during the fiscal year, review the revenue and the statutory program disbursements requirement, [~~projected retail sales of electricity, or the system benefit account payments and balance, and~~] revise the system benefit fee amount, and issue an order for the remainder of the year to accomplish the purposes of PURA §39.901 and §39.903. [~~The commission may issue an order revising the fee amount.~~] The TDUs shall implement the new fee in billings to the REPs within 30 calendar days of the date such order is issued. Whenever the fee is changed, or at least once annually, the TDUs will file with the commission an updated tariff sheet, reflecting the new fee.

(4) The fee may not exceed [~~$0.50 per MWh, except beginning in January 1, 2002, and until December 31, 2006, it may be set in an amount not to exceed~~] $0.65 per MWh [~~if necessary to fund at least a 10% reduction in rates for qualifying low-income customers~~].

(e) Revenue requirement. The revenue requirement shall be an amount of revenue necessary to fund the purposes outlined in PURA §39.903 consistent with legislative appropriations, all operating costs of the Rate Reduction Program, a reserve balance to be determined by the commission, and any other purpose required by statute [~~used by the commission to set the system benefit fee for each fiscal year shall be established as provided by this subsection~~].

[~~(1) The total revenue requirement used to set the amount of the system benefit fee will be the total of the revenue requirements determined under paragraphs (2)-(5) of this subsection, including the shortfall, if any, in funding for the Texas Education Agency (TEA) from the previous year.~~]

[~~(2) TEA shall provide by June 1 of each year its estimate of the amount required to fund school funding losses as determined under PURA §39.901(b) and (c) for the next fiscal year. If TEA does not provide its estimate by this date, the commission may use the amount determined by TEA under PURA §39.901(b) and (c) for the current fiscal year in setting the amount of the fee for the following fiscal year.~~]

[~~(3) The revenue requirement needed to effect the rate reduction for low-income customers and the targeted energy efficiency programs shall be determined as follows:~~]

[~~(A) The revenue requirement for reduced rates as provided by PURA §39.903(h)-(l) shall be based on the average annual consumption of electric energy by low-income customers and the number of such customers enrolled in a rate reduction program as of June 1 of each year, or the number of eligible participants as listed in the Texas Department of Human Services' client database, plus a projection for new enrollees, to account for growth in enrollment, based on the latest available census data and as determined by the commission. The average annual expenditure by a low-income customer for electric energy shall be derived from the latest available data. The commission may use information provided by the REPs for the purposes of estimating rate discount revenue requirement.~~]

[~~(B) The revenue requirement for targeted energy efficiency programs, including a low-income energy efficiency plan, to be administered by the Texas Department of Housing and Community Affairs (TDHCA) shall be provided to the commission by June 1 of each year. If TDHCA does not provide an estimate by that date, the commission may use the estimate from the previous fiscal year, the actual amount spent on the programs in the prior fiscal year, or any other amount the commission determines to be reasonable.~~]

[~~(4) The commission shall include in the calculation of revenue requirement any additional amounts authorized by the legislature, including appropriations to the Public Utility Commission for customer~~

education programs and any other authorized purpose, and for the Office of Public Utility Counsel.]

[(5) The commission shall include in the calculation of the revenue requirement the operating costs for the low-income discount administrator.]

(f) Electric sales estimate. The TDUs, and when applicable, the municipally [municipallly] owned utilities (MOUs) and Coops, upon request by the commission, shall supply an aggregate number of the amount of retail electric sales in their service areas for the preceding calendar year, by April 1 of each year. Upon receipt of such information, the commission will file the aggregated retail electric sales in the relevant areas, after adjusting for projected growth. The commission shall determine the most reasonable estimate when it sets the system benefit fee.

(g) Remittance of fees after January 1, 2002.

(1) Beginning in January 2002, each TDU, MOU, or Coop[,] collecting the system benefit fee from the REPs [REP], MOUs, or Coops[,] in its service area, shall remit the fees to the Comptroller on the 20th day of each month.

(2) Remittance of funds to the Comptroller shall comply with the Comptroller's rules governing any such deposits and the method in which they are sent to the Comptroller. [Any amounts over $250,000 shall be transferred electronically.]

(3) Deposits due to the System Benefit Fund [system benefit account] pursuant to PURA §39.352(g) shall be transferred to the Comptroller at the time of the filing of the annual report pursuant to §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)) in a form prescribed by the Comptroller.

(4) The collecting utility shall account for all system benefit fees received from the REPs, [and] MOUs, or Coops[,] in its service area separately from any other account in its records.

(h) Billing requirements.

(1) A TDU, an MOU, or a Coop shall send billing statements to the REPs indicating the amount of system benefit fee owed for the specified period. The billing and payments between the TDU and the REPs shall be governed by §25.214 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by Investor Owned Transmission and Distribution Utilities), and between MOUs and Coops and the REPs by §25.215 of this title (relating to Terms and Conditions of Retail Distribution Service Provided by MOUs and Coops).

(2) The REP shall remit to the TDU, an MOU, or a Coop an amount equal to the kWh of electric energy consumed by its customers in the utility's service area times the fee approved by the commission for that period.

(3) For those retail customers who switch to on-site generation pursuant to PURA §39.262(k), the system benefit fee shall be based on the amount of actual power delivered to them by a TDU. The TDU will calculate and bill any such fee, and will forward the payment, once received, to the Comptroller on the next fee payment due date. The TDUs will separately identify these sales when submitting the aggregate number of electric retail sales.

(i) Reporting and auditing requirements.

(1) Each REP [retail electric provider] offering rate reductions [reduction discounts] to eligible customers shall keep records of such rate reductions [discounts] to enable an audit by the commission or its agent for at least three years from the date the rate reduction [discount] is first given to the customer. Reports filed under subsection (j) of this section will also be used for auditing purposes. Records kept in accordance with §25.454(f)(3)(B) of this title (relating to Rate Reduction Program) shall be subject to audit upon commission request.

(2) Each TDU, MOU, or Coop collecting and forwarding the system benefit fee to the Comptroller shall file with the commission at the time the money is sent a report, on a commission-prescribed form, stating for each service territory the amount of the system benefit fee billed, the amount forwarded to the Comptroller, and the number of MWh of electric energy sold. The report shall contain monthly amounts and year-to-date totals.

(j) Reimbursement for [the] rate reductions [reduction discount]. Each REP, or MOU or Coop, when applicable, shall submit to the commission a monthly activity report on a form prescribed by the commission, including but not limited to, [listing] information in paragraphs (1)-(5) of this subsection. The commission shall, within five business days of receipt of the monthly report, prepare and deliver to the comptroller an authorization for reimbursement to the REP, MOU, or Coop in a form prescribed by the commission and the Comptroller. [The prescribed form shall include, but not be limited to, instructions for direct deposit of the reimbursement into the bank account of the REP, MOU, or Coop.] The Comptroller shall transfer the funds by the close of the next business day, following receipt of an authorization from the commission. The monthly activity report submitted by the REPs, MOUs, or Coops shall be due on the 20th day following the reporting month and contain the following:

(1) The number of low-income customers enrolled in the rate reduction program;

(2) The amount of reimbursement requested [and received from the fund for the month];

(3) The aggregate electric energy consumption in kWh for all low-income customers enrolled in the program for the previous month;

(4) The total amount of rate reductions [discounts] provided to the low-income customers in the previous month; and

(5) The amount of the system benefit fee billed by and remitted to the TDU.

(k) Transfer of funds to other state agencies. Payment transfers to other state agencies pursuant to this rule shall be governed by statute, the Appropriations Act, or the Comptroller [interagency agreements].

[(l) Establishment of fee and collection of funds prior to January 1, 2002. Prior to the beginning of customer choice on January 1, 2002, the commission shall determine the level of the system benefit fee based upon the expenses authorized for payment out of the system benefit account or as needed for purposes of PURA.]

[(1) An estimate of projected retail sales of electricity for the period shall be filed by the commission staff prior to the issuance of a commission order.]

[(2) The commission shall issue an order setting the amount of the system benefit fee, assessing that amount against each electric utility in proportion to its retail electric sales out of the total retail sales in the state, and directing the utilities on the method and timing of payment.]

§25.454. Rate Reduction Program.

(a) Purpose. The purpose of this section is to define the low-income electric rate reduction program, establish the [discount] rate reduction calculation, and specify enrollment options and processes.

(b) Application. This section applies to retail electric providers (REPs) and [Except as provided in the Public Utility Regulatory Act (PURA) §39.102(c) and retail electric providers (REPs) certified under PURA §39.352(d), this section applies to REPs, to] providers of last resort (POLR) as defined in PURA §39.106, that provide electric service in an area that has been opened to retail competition, and to municipally owned electric utilities and electric cooperatives on a date determined by the commission, but no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice in its certificated area.

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

(1) Discount credit [amount]--The amount of discount an eligible low-income customer is entitled to receive from any REP in the customer's area, expressed as cents per kilowatt-hour (kWh).

(2) Discount percentage--The percentage of discount established by the commission [annually, or as needed,] and applied to the lower of the price to beat or POLR rate in a particular service territory.

[(3) Discount rate--A rate charged by a REP or POLR that includes the commission-established discount.]

[(4) Electric Reliability Council of Texas (ERCOT)--a nonprofit Texas corporation that represents an area of Texas served by electric utilities, municipally owned utilities, and electric cooperatives, and which is not synchronously inter-connected with electric utilities outside the state of Texas.]

[(5) Electric service identifier (ESI ID)--The basic identifier assigned to each point of delivery used in the registration system and settlement system managed by ERCOT or another independent organization.]

[(6) Low-income customer--An electric customer, whose household income is not more than 125% of the federal poverty guidelines, or who receives food stamps from the Texas Department of Human Services (TDHS) or medical assistance from a state agency administering a part of the medical assistance program.]

(3) [(7)] Low-Income Discount Administrator (LIDA)--A third-party vendor [administrator] contracted by the commission to administer the rate reduction program.

(4) Low-Income Discount Procedural Guide--A working guide detailing the exact roles and requirements of the Low-Income Discount Administrator (LIDA), REPs, and the Electric Reliability Council of Texas (ERCOT). Instructions in the guide shall be deemed directives of the commission. All versions of the guide will be approved by the Executive Director.

(5) Rate reduction--The total discount to be deducted from a customer's electric bill. This reduction is derived from the discount credit and total consumption in accordance with subsection (d)(3) of this section.

[(8) Provider of last resort (POLR) rate--The rate for the standard retail service package offered by the provider of last resort in the area under §25.43 of this title (relating to the Provider of Last Resort).]

[(9) Price to beat (PTB)--A price for electricity, as determined pursuant to PURA §39.202, charged by an affiliated REP to customers in its service area.]

[(10) Rate reduction program--A program to provide reduced electric rates for eligible low-income customers, in accordance with PURA §39.903(h).]

[(11) Registration agent--Entity designated by the commission to administer registration and settlement, premise data, and other processes concerning a customer's choice of retail electric provider in the competitive electric market in Texas.]

(d) Rate reduction program. All eligible low-income customers as defined in §25.5 of this title (relating to Definitions) shall be entitled to receive a rate reduction [discount rate], as determined by the commission pursuant to this section, on their electric bills from their retail electric providers. [The discount will be identified on each eligible customer's bill and applied only to the electric service portion of the bill.]

[(1) Eligibility criteria. A low-income customer, as defined in subsection (c) of this section, is entitled to receive a discount rate.]

(1) [(2)] Discount percentage. The commission shall periodically establish a discount percentage [each year at the time the commission sets the system benefit fee]. The discount percentage shall not be less than 10% and may, if there are funds sufficient to support a higher level, be set as high as 20%.[:]

[(A) Shall not be less than 10% and may, if there are funds sufficient to support a higher level, be set as high as 20%.]

[(B) May be recalculated during the year as necessary.]

(2) [(3)] Discount credit [amount]. The commission shall set the discount credit for an eligible low-income customer in accordance with this subsection [A REP shall provide to each eligible low-income customer a rate discounted by an amount as established by this subsection for the area in which the customer is located].

(A) The discount credit shall be separately calculated for each transmission and distribution utility service area [commission shall calculate and establish the low-income discount amount for distinct geographical areas, which shall correspond to the certified electric utility service areas, or smaller areas designated by the commission as POLR service areas].

(B) The discount credit [amount] shall be calculated by applying the discount percentage to [taking] the lower of the POLR rate and the standard residential price to beat rate. More details concerning the calculation of the discount credit will be set out in the Low-Income Discount Procedural Guide. [PTB to establish the baseline rate. If there are multiple price to beat rates available to a residential customer, the commission will calculate the baseline rate by using the standard residential rate, seasonally adjusted; multiply it by the cost of the first 1000 kWh of usage; and then divide it by 1000 to obtain a cents per kWh cost. The discount amount shall be calculated by multiplying the cents per kWh cost of the baseline rate by the discount percentage.]

(C) If the [commission changes the] discount credit changes for any area because of a change to [amount, by either changing] the discount percentage or a change to the [establishing a new] baseline rate for any area, [then] REPs shall [must] implement the resulting change in the discount credit [amount] in their billings to customers within 30 calendar days of the date the commission issues an order changing the discount credit [its order].

[(D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Account) for amounts equal to the documented discount amounts they have provided to eligible low-income customers.]

(3) [(4)] Rate reduction. Each eligible low-income customer shall be entitled to receive a rate reduction from any REP in the customer's service area [a discount rate equal to the discount amount times the number of kWh of electricity, which the customer has consumed during a billing cycle. The discount rate shall be the rate the customer would otherwise be charged by that REP minus the discount amount].

(A) REPs will maintain a current record of the commission-posted discount credits per area, per season. REPs will use the posted discount credits to calculate the rate reduction for each eligible low-income customer's bill.

(B) The rate reduction will be calculated by multiplying the customer's total consumption (kWh) by the discount credit (cents/kWh).

(C) REPs will clearly identify the customer's discount credit and resulting rate reduction as a line item on the electric portion of the customer's bill. The discount credit will be detailed on the left side of the billing section, opposite the rate reduction, with the language: "LITE-UP Discount -___ kWh Total @ ___ cents/kWh."

(D) REPs are entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for amounts equal to the documented rate reductions they have provided to eligible low-income customers.

(e) Terms of customer enrollment. Eligible customers will be enrolled in the [low-income discount] rate reduction program through automatic enrollment or a self-certification process implemented by LIDA.

(1) Automatic enrollment. Automatic enrollment is an electronic process to identify customers eligible for the rate reduction by matching client data from TDHS with electric customer data [of identifying customers eligible for the low-income discount rate by matching data from agencies that operate programs serving eligible clients with electric utility data maintained by the ERCOT's registration agent]. The transfer of data for the purposes of establishing and maintaining the automatic enrollment process shall be detailed in the Low-Income Discount Procedural Guide. [occur between TDHS, ERCOT, and the LIDA. To accomplish the purposes of this subsection, the commission shall:]

[(A) Contract with a person to perform the LIDA function. This person shall perform all necessary tasks to establish and maintain the automatic enrollment system, or any other related task, as specified in the contract.]

[(B) Enter into a memorandum of understanding with TDHS to establish the respective duties of the two agencies.]

[(C) Develop a protocol to define the automatic enrollment process and the respective duties of the participating entities sharing data.]

(2) Self-certification. Self-certification is an [a form of] alternate enrollment process available to [those]eligible electric customers who are not automatically enrolled and [do not receive benefits from TDHS, but] whose combined household income does not exceed 125% of federal poverty guidelines. The self-certification [Self-certification] enrollment process shall be administered by LIDA. LIDA's responsibilities shall include:

(A) Distributing and processing [Processing the] self-certification applications, as[which shall be filed on a form] developed by the commission;[.]

(B) Maintaining customer records for all applicants; [Adding qualified applicants to the list of eligible electric service identifiers (ESI IDs).]

(C) Providing information to customers regarding the process of enrolling in the low-income discount program; [Processing and maintaining a list of applicants' address changes.]

(D) Matching customer information submitted through self-certification forms with electric customer data; and [Forwarding to the REPs the list of ESI IDs, with monthly updates.]

(E) Verifying the self-certification by requesting copies of tax returns, pay stubs, letters from employers, or other information. [Maintaining a toll-free number for inquiries. This number shall be displayed on the self-certification application.]

[(F) Conducting outreach and distributing self-certification applications.]

[(G) LIDA may, at its discretion verify the self-certification applicants' income by requesting copies of tax returns, pay stubs, or letters from employers.]

(3) Period of customer enrollment. The eligibility period of each customer will be determined by the customer's method of enrollment[: Once enrolled, the eligible customer shall receive the discount rate for 13 months from the date of enrollment].

(A) The eligibility period for self-certified customers is seven months from the date of enrollment. Self-certified customers will have the opportunity to renew their eligibility for an additional seven months, prior to the expiration of their eligibility period. [The continued eligibility status of the customer shall be reviewed during the twelfth month after the date of initial enrollment, and every 12 months thereafter.]

(B) The eligibility period for automatically enrolled customers is the length of their enrollment in TDHS benefits as defined in subsection (c) of this section plus a grace period for renewal. Automatically enrolled customers will have the opportunity to renew their eligibility and to become self-certified for an additional seven months, upon the expiration of their automatic enrollment. [Customer who continues to receive TDHS benefits as defined in subsection (c) of this section, will have eligibility for the discount rate renewed for a new 13-month period.]

(f) Responsibilities [Protocol]. In addition to the requirements established in this section, program responsibilities may be established in the commission's contract with LIDA, the memorandum of understanding between the commission and TDHS, and the Low-Income Discount Procedural Guide. [The purpose of the protocol is to define responsibilities of the participating entities. Other technical information may be added to the request for proposal for the LIDA and memoranda of understanding between the parties as necessary to establish the automatic enrollment process, in accordance with this section.]

(1) TDHS shall:

(A) Assist in the implementation and maintenance of the automatic enrollment process by providing a database of customers receiving TDHS benefits as detailed in the memorandum of understanding between TDHS and the commission. [No later than April 1, 2001, provide the LIDA with a complete database of its clients, stripped of all information except as listed below, and sorted by ZIP codes. For each client, the database shall include:]

[(i) Full name; and]

[(ii) Service and mailing addresses, including city, state, and five-digit ZIP code, following the U.S. Postal Service standards;]

(B) Assist in the distribution of promotional and informational material as detailed in the memorandum of understanding [Provide the LIDA with monthly updates of the names, or ESI ID if available, and addresses of new clients and any address changes for existing clients who move].

[(C) Provide monthly updates of clients who are no longer receiving benefits from TDHS as of the twelfth month of client enrollment in the low-income discount program.]

[(D) Distribute the self-certification applications in TDHS offices statewide.]

[(2) ERCOT shall:]

[(A) No later than April 1, 2001, allow the LIDA to have access to a database of residential premises that includes for each premise:]

[(i) Service address, including city, state, and five-digit ZIP code, following the U.S. Postal Service standards; and]

[(ii) ESI ID.]

[(B) Provide the LIDA with monthly updates of new residential premises and their ESI IDs.]

[(C) Provide the LIDA with monthly updates of residential premises that have had a change of tenant (i.e., move-out/move-in).]

[(D) Provide the LIDA with monthly updates of those customers and ESI IDs who switched retail electric providers.]

(2) [(3)] LIDA shall:

(A) Retrieve customer lists on a monthly basis through data transfer as detailed in the Low-Income Discount Procedural Guide [the initial database of residential premises and ESI IDs from ERCOT].

(B) Retrieve the [initial]database of clients from TDHS on a monthly basis.

(C) Conduct self-certification, automatic enrollment, and renewal processes [Establish a list of eligible ESI IDs by initially, and then periodically, comparing the addresses from the ERCOT and TDHS databases and identifying records that reasonably match].

(D) Send lists of low-income customers eligible to receive the rate reduction to each REP on a monthly basis [Retrieve on a monthly basis the ERCOT's update of change of tenants and remove those ESI IDs from the list of eligible ESI IDs].

(E) Establish a list of eligible ESI IDs by comparing the customer lists and TDHS databases and identifying records that reasonably match [Retrieve on a monthly basis the ERCOT's list of new premises and add those to the database used for matching].

[(F) Retrieve on a monthly basis the TDHS list of addresses of new clients and clients who have moved and add those that reasonably match the ERCOT list to the list of eligible ESI IDs.]

[(G) Implement a program whereby potential low-income customers can self-certify for enrollment in the rate reduction program, as specified in subsection (e)(2) of this section. The program must enable the customer to submit a change of address.]

(F) [(H)] Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate reduction [discount] program.

(G) Provide information to customers regarding enrollment for the rate reduction program and eligibility requirements.

[(I) Annually report to the commission as to the number of customers enrolled through the automatic enrollment process and the number of customers enrolled though self-certification.]

[(J) Make the database of eligible ESI IDs available to the REPs.]

(3) [(4)] A REP shall:

(A) Provide information to, and receive information from, LIDA in accordance with the Low-Income Discount Procedural Guide [Retrieve on a monthly basis the list of eligible ESI IDs from the LIDA].

(B) Monitor high-usage customers to ensure that premises are in fact residential and maintain records of monitoring efforts for audit purposes. High-usage customers shall be defined in the Low-Income Discount Procedural Guide. [Compare the list of its customers with the list of eligible ESI IDs, and enroll those ESI IDs that match in the rate discount program. The customer enrollment shall take place within the first billing cycle if notification is received within seven days before the end of the billing cycle or within 30 calendar days after the REP receives notification from the LIDA, whichever comes first.]

(C) Apply a rate reduction to the electric bills of the eligible ESI IDs identified by LIDA within the first billing cycle, if notification is received within seven days before the end of the billing cycle, or within 30 calendar days after the REP receives notification from the LIDA, whichever occurs first [Develop procedures to notify customers of enrollment, expiration, and opportunities for renewal of the rate discount program].

(D) Notify customers twice a year about the availability of the rate reduction [discount] program, and provide self-certification forms to customers upon request.

(E) Resolve issues concerning customer eligibility, including the failure to provide discounts to customers who believe they are eligible and the provision of discounts to customers who may not meet the eligibility criteria, in accordance with the Low-Income Discount Procedural Guide.

(F) [(E)] Provide to the commission copies of materials regarding the rate reduction [discount] program given to customers during the previous 12 months.

(4) ERCOT. Shall provide information to, and receive information from, LIDA in accordance with the Low-Income Discount Procedural Guide.

(g) Confidentiality provision.

(1) All data transfers shall be conducted under the terms and conditions of a TDHS confidentiality agreement so as to protect customer privacy. The acquired data shall only be used for the purposes of implementing automatic enrollment.

(2) Data shall not be provided to the REPs in advance of registering customers. LIDA's protocols and procedures shall be developed in a way that maintains the customer eligibility for the rate reduction [discount] as proprietary data not to be used for any other purpose.

§25.457. Implementation of the System Benefit Fee by the Municipally Owned Utilities and Electric Cooperatives.

(a) Purpose. The purpose of this section is to implement the system benefit fee and associated programs as they relate to municipally owned utilities and electric cooperatives.

(b) Applicability. This section applies to a municipally owned utility and electric cooperative, no sooner than six months preceding the date on which a municipally owned utility or an electric cooperative implements customer choice in its certificated service area.

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

[~~(1) Electric cooperative--As defined in §25.5 of this title (relating to Definitions).~~]

[~~(2) Municipally owned utility--As defined in §25.5 of this title.~~]

(c) [~~(d)~~] Implementation of fee collection. Not earlier than six months before the onset, and not later than the day of implementation of customer choice in its service territory, a municipally owned utility or an electric cooperative shall impose on its customers, including its transmission and distribution customers who choose to receive a single bill from the municipally owned utility or electric cooperative, a system benefit fee, as determined by the commission pursuant to §25.451(d) of this title (relating to the Administration of the System Benefit Fund [~~Account~~]).

(d) [~~(e)~~] Billing requirements. Each municipally owned utility or electric cooperative shall comply with the billing requirements in §25.451(h) of this title.

(e) [~~(f)~~] Remittance of funds. The system benefit fee collected by a municipally owned utility or an electric cooperative shall be remitted to the Texas Comptroller of Public Accounts (Comptroller) pursuant to §25.451(g) of this title.

(f) [~~(g)~~] Fee reduction. The commission shall, on a request by a municipally owned utility or an electric cooperative, reduce the system benefit fee, imposed on the requesting entity's [~~its~~] retail customers, by an amount equal to the amount provided by the requesting municipally owned utility or an electric cooperative, or their retail customers, for local, low-income programs and local programs that educate customers about the retail electric market in a neutral and non-promotional manner. The qualifying low-income programs must reduce the cost of electricity to the recipients of such programs and be targeted at customers whose total household income does not exceed 125% of federal poverty guidelines. Upon request by the commission [~~At the time of its request~~], and once a year thereafter, the municipally owned utility or an electric cooperative shall provide to the commission the following:

(1) The total in kWh of electric power sold to its retail customers in the 12 months preceding the request;

(2) The total amount spent on [~~the~~] qualifying, local, low-income programs, for which the reduction is being sought, in the 12 months preceding the date of request;

(3) The total amount spent on qualifying, local, educational programs, for which the reduction is being sought, in the 12 months preceding the date of request;

(4) The total amount projected to be spent on qualifying, local, low-income programs, for which reduction is being sought, in the 12 months following the date of request; and

(5) The total amount projected to be spent on local, qualifying, educational programs, for which reduction is being sought, in the 12 months following the date of request.

(g) [~~(h)~~] Rate reduction [~~Reduced rate~~]. A municipally owned utility or an electric cooperative shall establish a discount credit [~~reduced rate~~] for its low-income customers, who are eligible for a rate reduction [~~discount~~] pursuant to §25.454(d) of this title (relating to the Rate Reduction Program). The rate reduction will be calculated pursuant to §25.454(d)(3)(B) of this title (relating to the Rate Reduction Program). The discount credit[~~, which~~] will be discounted off the standard retail service package established under the Public Utility Regulatory Act (PURA) §40.053 or §41.053, as appropriate. The discount credit and resulting rate reduction will be clearly identified as a line item on the electric portion of the customer's bill.

(h) [~~(i)~~] Reduction in program funding. If a municipally owned utility or an electric cooperative requests a reduction in fees paid pursuant to subsection (f) [~~(g)~~] of this section, then the portion of the system benefit fee proceeds allocated for low-income or education programs for that municipally owned utility or electric cooperative shall be reduced by the amount of such reduction.

(i) [~~(j)~~] Reimbursement. Each municipally owned utility or electric cooperative is entitled to reimbursement under §25.451(j) of this title (relating to Administration of the System Benefit Fund) for amounts equal to the documented rate reductions they have provided to eligible low-income customers. [~~To receive reimbursement for the rate discounts provided to eligible low-income retail customers, the municipally owned utility or electric cooperative shall comply with §25.451(j) of this title. The municipally owned utility or electric cooperative may seek reimbursement for the difference between the reduced rate charged to its low-income customers and the standard retail service package established under PURA §40.053 or §41.053, as appropriate.~~] The total annual reimbursement for a municipally owned utility or electric cooperative shall not be more than the proportional amount a municipally owned utility or electric cooperative has paid into the System Benefit Fund [~~system benefit account~~]. The proportional amount shall be established by the commission in the following manner, and amended as necessary:

(1) By calculating a share of the total revenue in the System Benefit Fund [~~system benefit account~~] that is spent on each of the programs as described in PURA §39.903(e) in the preceding 12 months; and

(2) By calculating the share of total spending on programs pursuant to PURA §39.903(e)(1) paid by each municipally owned utility or electric cooperative into the System Benefit Fund. [~~system benefit account; and~~]

[~~(3) Any such calculations can be amended by the commission as necessary throughout the year.~~]

(j) [~~(k)~~] Reporting requirements. If a municipally owned utility or an electric cooperative continues to bill customers pursuant to PURA §40.057(c) or §41.057(b), as appropriate, then the municipally owned utility or electric cooperative shall file with the commission two [~~types of~~] reports. One report will identify the amount of system benefit fee collected and paid by the reporting entity's [~~its~~] retail customers pursuant to §25.451(i)(1) of this title; the other [~~second~~] report shall identify the amount of system benefit fee paid by the transmission and distribution only customers pursuant to §25.451(i)(2) of this title. Both [~~types of~~] reports shall be filed with the commission at the time the system benefit fee is paid pursuant to §25.451(g) of this title.

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

Filed with the Office of the Secretary of State on July 16, 2003.

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Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 53. REGIONAL EDUCATION SERVICE CENTERS

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §53.1002

The Texas Education Agency (TEA) proposes an amendment to §53.1002, concerning charter school representation on board of directors. The section establishes provisions related to charter school member representation, term of office, and appointment process. The proposed amendment would update the rule to remove language relating to the transition period deadline that ended May 31, 2003.

House Bill 6, 77th Texas Legislature, 2001, directed the commissioner to adopt rules for a wide range of issues related to open-enrollment charter schools, including those that provide for representation of open-enrollment charter schools on the board of directors of regional education service centers. 19 TAC §53.1002 establishes provisions relating to a representative of the open-enrollment charter schools in a region to serve as a non-voting member of the board of directors of that regional education service center. The rule, which was adopted to be effective July 8, 2002, specified details regarding the charter school member, term of office, and appointment process and included a transition period for the first year of the new provisions. The transition period of June 1, 2002, through May 31, 2003, has now expired.

The proposed amendment to 19 TAC §53.1002 deletes the current subsection (d), which refers to the transition period, and adds a new subsection (d) relating to when no applicant is appointed. In an instance when the commissioner does not select a representative from among existing applicants or if no applicant applies for appointment, the new language would provide that a vacancy exists that is to be filled in the manner currently provided for vacancies. This amendment addresses an ambiguity in the existing rule where an insufficient number of qualified applicants have timely applied for appointment under the current rule.

Philip Cochran, Director of Education Service Center/Higher Education Financial Support, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Cochran has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be an updated rule that helps charter schools gather information and build relationships in order to better serve students. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

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

The amendment is proposed under the Texas Education Code (TEC), §12.104, which authorizes the commissioner of education to adopt rules that provide for the representation of open-enrollment charter schools on the boards of directors of regional education service centers.

The amendment implements the TEC, §12.104.

§53.1002. Charter School Representation on Board of Directors.

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

(d) No applicant appointed. If the commissioner does not select a representative from among the applicants under subsection (c) of this section, or if no applicant applies for such appointment, then there shall be a vacancy which shall be filled by appointment by the commissioner of education.

[~~(d) Transition period deadlines. Notwithstanding anything in this section, the following provisions shall govern where a charter school member of an RESC board of directors is appointed to a term of office that includes any of the period from June 1, 2002, through May 31, 2003:~~]

[~~(1) Any eligible person wishing to seek appointment as a charter school member of an RESC board of directors shall file an application during a period commencing on the tenth day following the effective date of this section and ending on the 30th day following the effective date of this section. The application shall be filed in accordance with the process specified in subsection (c) of this section.~~]

[~~(2) Not later than the 90th day following the effective date of this section, the commissioner of education shall notify the board of directors of each qualifying RESC of the commissioner's appointee to serve as the charter school member of that RESC board of directors.~~]

[~~(3) The term of office of a charter school member of an RESC board of directors appointed under this subsection shall begin on the day the commissioner of education notifies the board of directors of the qualifying RESC of the commissioner's appointee to serve as the charter school member of that RESC board of directors and shall expire May 31, 2003.~~]

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

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Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
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CHAPTER 101. ASSESSMENT
SUBCHAPTER B. DEVELOPMENT AND ADMINISTRATION OF TESTS

19 TAC §101.23, §101.33

The State Board of Education (SBOE) proposes amendments to §101.23 and §101.33, concerning student assessment. Section 101.23 establishes that the SBOE determines the level of performance considered to be satisfactory on assessment instruments. Section 101.33 addresses the release of tests. The proposed amendment to §101.23 incorporates into rule the performance standards established by the SBOE. The proposed amendment to §101.33 reduces the frequency of release of tests to the public.

As mandated by Senate Bill (SB) 103, 76th Texas Legislature, 1999, the Texas Education Agency developed a new statewide testing program, the Texas Assessment of Knowledge and Skills (TAKS), which was first implemented in the 2002-2003 school year. The SBOE is charged by law with the responsibility to set the passing standards for the TAKS. In November 2002, when the SBOE adopted performance standards for the TAKS, the SBOE adopted two cut points that result in three student performance categories: Commended Performance, Met the Standard, and Did Not Meet the Standard. For each standard, the SBOE accepted the recommendations of advisory panels. The SBOE also established a two-year phase-in period for the "Met" performance standard and followed the national Technical Advisory Committee's recommendation to use the standard error of measurement (SEM) statistic to determine the standards during the phase-in period. For 2003, the passing standard was set at 2 SEM below the panels' recommendations, moving up to 1 SEM below the next year, and then to the panels' recommendations in the 2004 - 2005 school year. In general, this transition plan means students would need to answer three to six fewer questions correctly the first year than when the plan is fully implemented. For example, Grade 3 students will be required to correctly answer 20 of 36 questions on the English reading exam to meet the standard in March 2003. Subsequent Grade 3 reading tests will be equated to the March 2003 test in order to ensure that the difficulty of the test forms remains the same. The standard required in 2004 will then be equivalent to achieving a score of 22 of 36 questions on the spring 2003 test and the standard required in 2005 will be equivalent to achieving a score of 24 of 36 questions on the spring 2003 test.

The proposed amendment to §101.23 revises subsection (a) adding Figure 19 TAC §101.23(a) to incorporate into rule a table depicting the performance standards established by the board for every grade and subject area. The performance standards are proposed as a rule in order to provide greater public accessibility. This table includes the TAKS scale score standards at the standard equivalent to the recommendations of advisory panels, as well as those scale score standards at 1 SEM and 2 SEM below the panels' recommendations. This is in accordance with the phase-in schedule established by the SBOE for full implementation of the TAKS performance standards. Language is also proposed in subsection (a) to incorporate the action adopted in November 2002 to maintain equivalent test forms in the future.

The proposed amendment to §101.33 revises language to reflect the statutory change to Texas Education Code, §39.023(e), passed by the 78th Texas Legislature, 2003, requiring a reduction in the frequency of releasing assessments to the public to only every other year.

Ann Smisko, Associate Commissioner for Curriculum, Assessment, and Technology, 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.

Dr. Smisko has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be the inclusion of additional specifications and clarification relating to performance standards and release of tests. There will not be an effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendments.

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

The amendments are proposed under Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendments implement the TEC, Chapter 39, Subchapter B.

§101.23. Performance Standards.

(a) Except as otherwise provided by the Texas Education Code (TEC), Chapter 39, Subchapter B, the State Board of Education (SBOE) shall determine the level of performance considered to be satisfactory on the assessment instruments. The table in this subsection identifies the performance standards established by the SBOE for the Texas Assessment of Knowledge and Skills (TAKS). The "commended" and "met" standards are based on spring 2003 operational test forms. Future forms will be equated by the Texas Education Agency to the 2003 assessments in order to ensure that equivalent standards are maintained.
Figure: 19 TAC §101.23(a)

(b) The alternative assessment of academic skills will measure annual growth based on appropriate expectations for each student receiving special education services, as determined by the student's admission, review, and dismissal (ARD) committee in accordance with criteria established by the commissioner of education as required by the TEC, §39.024(a).

§101.33. Release of Tests.

Every other year after the 2004 administration [~~At the end of each school year~~], the Texas Education Agency shall release all test items and answer keys required under the Texas Education Code (TEC), Chapter 39, Subchapter B. After a period of five years, each test item that has been field-tested but not used on a test will be released.

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

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Cristina De La Fuente-Valadez
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SUBCHAPTER E. LOCAL OPTION

19 TAC §101.101

The State Board of Education (SBOE) proposes an amendment to §101.101, concerning student assessment. The section addresses group-administered tests and requirements relating to the reporting of test results. The proposed amendment would require that a testing company or local school district provide results for all district-commissioned, group-administered tests, not just norm-referenced tests. Also, the proposed amendment would ensure that the same form of the testing instrument would not be repeated for more than three years.

Texas Education Code (TEC), §39.026, provides for the optional use of locally adopted criterion-referenced or state-approved norm-referenced assessment instruments to be used in addition to the assessment instruments. For group-administered achievement tests given under this local option, TEC, §39.032, requires that the school district not use the same form of an assessment instrument for more than three years and that the standardization norms not be more than six years old at the time the test is administered.

In a letter to the commissioner of education, Texas State Representative Kent Grusendorf expressed several concerns regarding agency compliance with this section and suggested corresponding actions to address these concerns. The commissioner responded that the agency agreed with Representative Grusendorf's assessment and would take appropriate actions to address these concerns. These actions include recommending to the SBOE a proposed amendment to §101.101, Group-Administered Tests, to clarify that: a testing company is required under TEC, §39.032, to provide results for all district-commissioned, group-administered tests, not just norm-referenced tests; and that use of the same form of the testing instrument is not to be repeated for more than three years.

The proposed amendment to §101.101 contains an obligation for testing companies and school districts to report the results of certain tests. It requires new data to be sent in electronic form for district-commissioned tests. Test vendors and school districts would electronically collect data from district-commissioned standardized tests and include the data in the agency's Data Warehouse project and Web portal. At this time, this reporting is expected to be done on an annual cycle (i.e., test results from the entire school year would be sent to the agency at one time, probably around September 1).

Ann Smisko, Associate Commissioner for Curriculum, Assessment, and Technology, has determined that for the first five-year period the amendment is in effect there will be no new fiscal implications for state government as a result of enforcing or administering the amendment. However, there will be a fiscal impact on businesses and local school districts (local governments) who participate in this local option.

Dr. Smisko has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the inclusion of expanded test results reporting by vendors and assurance that testing instruments are not administered excessively. There will be an effect on small businesses. There is anticipated economic cost to persons who are required to comply with the amendment. The proposed amendment to 19 TAC §101.101 would require that a testing company or local school district provide results for all district-commissioned, group-administered tests, not just norm-referenced tests. No data are collected at the state level concerning the number of districts that will be affected by this requirement or the number of students that are tested under this local option. The savings associated with greater economies of scale will cause the fiscal impact to be less on large test publishers than on small businesses.

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

The amendment is proposed under Texas Education Code, Chapter 39, Subchapter B, which authorizes the State Board of Education to adopt rules to create and implement a statewide assessment program.

The amendment implements the TEC, Chapter 39, Subchapter B.

§101.101. Group-Administered Tests.

(a) An assessment instrument required under the Texas Education Code (TEC), §39.032, is defined as any district-commissioned [~~a nationally normed~~] achievement test, either nationally normed or criterion-referenced, that is group administered and reported publicly in the aggregate. A test given for a special purpose, such as program placement or individual evaluation (e.g., a spelling test or a diagnostic test, such as a reading inventory), is not included in this definition. The commissioner of education shall provide annually to school districts and charter schools a list of state-approved group-administered achievement tests that test publishers certify meet the requirements of TEC, §39.032.

(b) A company or organization scoring a test defined in subsection (a) of this section shall send test results to the school district for verification. The school district shall have 90 days to verify the accuracy of the data and report the results to the school district board of trustees. The company or organization shall provide results in electronic form in the same form that such information is provided to the school district to the Texas Education Agency annually and data shall include the name, level, and form of the test; the year in which the test was normed; and the mean normal curve equivalent aggregated for each subject area by grade, campus, and district. State norms shall be provided if available.

(c) A company or organization that reports results using national norms or state standards that do not comply with the TEC, §39.032 [~~§39.032(c)~~], is liable for damages as stated in the TEC, §39.032(d).

(d) To maintain the security and confidential integrity of group-administered achievement tests, school districts and charter schools shall follow the procedures for test security and confidentiality delineated in Subchapter C of this chapter (relating to Security and

Confidentiality). A school district may not use the same form of any test defined in subsection (a) of this section for more than three years.

(e) Any school district that develops its own test that meets the definition of subsection (a) of this section is also obligated to report those results in electronic form to the Texas Education Agency in the same manner as required in subsection (b) of this section.

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

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

TRD-200304373
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 463-9701

TITLE 22. EXAMINING BOARDS

PART 28. EXECUTIVE COUNCIL OF PHYSICAL THERAPY AND OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 651. FEES

22 TAC §651.1

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.1, concerning Fees. This section is being amended to raise the fee for applications and renewals in compliance with House Bill 2985, and add a new fee for ACH return fee.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the creation of the Office of Patient Protection within the Health Professions Council. There will be a small effect on small businesses. There are fee changes from $2 to $5 of anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted Jennifer Jones, Executive Council of Physical Therapy and Occupational Therapy Examiners, (512) 305-6900, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; e-mail: jennifer.jones@mail.capnet.state.tx.us.

The amendment is proposed under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by this amended section.

§651.1. Occupational Therapy Board Fees.

(a) Regular License

(1) Occupational Therapist--$115 [~~$110~~]

(2) Occupational Therapy Assistant--$90 [~~$85~~]

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

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

(f) Renewal

(1) Active

(A) Occupational Therapist--$217. [~~$215~~]

(B) Occupational Therapy Assistant--$167. [~~$165~~]

(2) (No change.)

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

(i) Registration Fees--Facilities.

(1) Registration of First Facility--$305. [~~$300~~]

(2) Registration of Each Additional Facility--$105. [~~$100~~]

(j) Renewal Fees--Facilities

(1) Renewal of Registration of First Facility--$306. [~~$305~~]

(2) Renewal of Registration of Each Additional Site--$106. [~~$105~~]

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

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

Filed with the Office of the Secretary of State on July 14, 2003.

TRD-200304264
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 305-6900

22 TAC §651.2

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.2, concerning Fees. This section is being amended to raise the fee for applications and renewals in compliance with House Bill 2985, and add a new fee for ACH return fee.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the creation of the Office of Patient Protection within the Health Professions Council. There will be a small effect on small businesses. There are fee

changes from $2 to $5 of anticipated economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Jennifer J. Jones, Executive Council of Physical Therapy and Occupational Therapy Examiners, (512) 305-6900, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; e-mail: jennifer.jones@mail.capnet.state.tx.us.

The amendment is proposed under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by this amended section.

§651.2. Physical Therapy Board Fees.

(a) Application/Permanent License.

(1) PT--$155 [~~$150~~].

(2) PTA--$105 [~~$100~~].

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

(f) License Renewal.

(1) Active license.

(A) PT--$217 [~~$215~~].

(B) PTA--$167 [~~$165~~].

(2) (No change.)

(g) - (i) (No change.)

(j) Facility Registration.

(1) First facility--$305 [~~$300~~].

(2) Additional site--$105 [~~$100~~].

(k) Facility Renewal.

(1) First facility--$306 [~~$305~~].

(2) Additional site--$106 [~~$105~~].

(l) - (m) (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 July 14, 2003.

TRD-200304265
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 305-6900

22 TAC §651.3

The Executive Council of Physical Therapy and Occupational Therapy Examiners proposes an amendment to §651.3, concerning Fees. This section is being amended to add a new ACH (Automatic Clearing House) return fee.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state or local government as a result of enforcing or administering the amendment.

Mr. Maline also has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the creation of the Office of Patient Protection within the Health Professions Council. There will be no effect on small businesses. There are fee charges of $25 of economic costs to persons who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted Jennifer Jones, Executive Council of Physical Therapy and Occupational Therapy Examiners, (512) 305-6900, 333 Guadalupe, Suite 2-510, Austin, Texas, 78701; e-mail: jennifer.jones@mail.capnet.state.tx.us.

The amendment is proposed under the Executive Council of Physical Therapy and Occupational Therapy Act, Title 23, Subchapter H, Chapter 452, Occupations Code, which provides the Executive Council of Physical Therapy and Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 452, Occupational Code is affected by this amended section.

§651.3. Administrative Services Fees.

(a) - (f) (No change.)

(g) ACH return fee--$25.

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

Filed with the Office of the Secretary of State on July 14, 2003.

TRD-200304266
John Maline
Executive Director
Executive Council of Physical Therapy and Occupational Therapy Examiners
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 305-6900

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 371. DRINKING WATER STATE REVOLVING FUND

SUBCHAPTER D. BOARD ACTION ON APPLICATION

31 TAC §371.52

The Texas Water Development Board (board) proposes amendments to 31 TAC Chapter 371, concerning the Drinking Water

State Revolving Fund. Proposed amendments to §371.52 revise the rule to provide the methodology for setting interest rates for all loans under the chapter and include the method for determining the interest rates charged for loans with a debt service schedule in excess of twenty years and when the annual debt service payments are not level through the term of the bonds.

The proposed amendments to §371.52 include new subsection (a) to insert definitions for terms commonly used in the section. The term "average life" is included as a necessary component of the methodology used to calculate the loan interest rate to be set by the executive administrator in this section. The average life is defined as the number that results from dividing the sum of the payment periods of all maturities of a loan by the principal amount of the loan. The term "borrower" is used to refer to eligible applicants that have received a commitment for financial assistance from the Drinking Water State Revolving Fund (DWSRF). The term "Delphis" is defined as the Delphis Hanover Corporation Range of Yield Curve Scales in order to identify the source of information that the board will use to identify the market cost of funds to a borrower. The board will use the Delphis because it is a standard recognized in the financial services industry for determining the market cost of funds. The term "loan interest rate" is used to identify the rate of interest that the board will charge a borrower for a loan from the DWSRF. Since financial assistance is provided by the purchase of a series of bonds or a loan agreement that identifies specific amounts to be repaid on specific dates, loan interest rate is defined as the series of interest rates that the board will charge for each bond in the borrower's bond series or for each principal payment in the loan agreement. The term "market rate" is defined since the loan interest rate will be determined in relation to the borrower's cost to acquire funds on the open market, which is determined by reference to the Delphis. The term "payment period" is included as a necessary component in determining the average life. It is the number that is determined by multiplying the maturity principal amount of each bond in the series or each maturity in the loan agreement by the standard period for such loan. The term "standard period" is defined because it is a necessary component in the calculation of average life. It is the number of days between the delivery of funds from the board to the borrower and the maturity date of a principal payment, calculated on the basis of a 360-day year composed of twelve 30-day periods, divided by 360.

Current subsection (a) is amended to be subsection (b). Subsection (b)(1)(A) is amended to include loan agreements because loan agreements are an available option to which this subsection should apply. Otherwise no other amendments are proposed to this subsection. Current subsection (b) is restructured as subsection (c) and completely replaced with new language to clarify the current procedure implemented by the board as well as to include additional methodologies to be used by the executive administrator for a loan for which the annual debt service schedule is not level. The first sentence currently provides that the loan interest rate is set at exactly 120 basis points below the fixed rate index rates. As a practical matter, a uniform rate exactly 120 basis points below the fixed rate index rates may result in annual debt service payments from the borrower becoming not substantially level, which could impair the ability of the board to meet its debt service obligations. Therefore it is necessary to recognize that the executive administrator is authorized to make adjustments to the loan interest rate to insure a level debt service. To aid in the organization of this section, the statement about the reduction in interest rates is moved to proposed new subsection (c)(2). Also, the rule is amended to refer to market rate rather than fixed rate index scale, as is currently used, because it is believed that market rate improves the clarity of the rule. A sentence is added to subsection (c) to summarize the process pursuant to which loan interest rates will be determined in the succeeding subsections.

Proposed new subsection (c)(1) is included to clearly delineate the existing method of identifying the market rate for the various categories of borrowers but otherwise is not intended as a substantive change. Subsection (c)(2) is intended to delineate, without substantive change, that the purpose of the program is provide interest rate reductions for each of two classes of borrowers and the circumstances that create each class. A provision is added in this subsection to make explicit the current practice of the board that regardless of the amount of the reduction from the market rate, the loan interest rate cannot be less than zero. This restriction is necessary in order to minimize the board's program costs.

Proposed new subsection (c)(3) identifies two methodologies for setting the loan interest rate. New subsection (c)(3)(A) assumes that this method will be applied unless the borrower requests otherwise. Under this subparagraph, the method for determining the interest rate as currently applied by the board is identified. This new subparagraph now accommodates the need of the board to insure level annual debt service payments even if doing so requires that the interest rate subsidy to be modestly adjusted from the full subsidy anticipated for the borrower. Under this process, the executive administrator determines the average life, as defined, and applies the subsidy to the market rate for the maturity for the year before the year in which the average bond life is reached. If the resulting debt service schedule is level to the satisfaction of the executive administrator, the loan interest rate will have been determined. However, if the resulting debt service schedule is not level to the satisfaction of the executive administrator, this subparagraph then specifically authorizes the executive administrator to adjust the interest rate in any of the maturities in order to insure that the bond repayment schedule is level. This amendment, as well as the amendments in subsection (c)(3)(B) acknowledges the authority of the executive administrator to determine whether the borrower's proposed debt service schedule is level. The financial services industry recognizes that annual debt service payments need not be exactly equal in order to be considered level. If the annual debt service schedule is not level, the cash flow necessary for the board to repay its obligations under the program may be impaired. Additionally, an un-level debt service structure may cause the amount of the subsidy that would be provided from the DWSRF to increase and potentially compromise the integrity of the fund. However, the degree to which the debt service payments may not be equal yet still remain sufficiently level for the purposes of funds management is a matter of judgement that should reside in the executive administrator. Therefore, in these amendments the determination of whether the debt service payment schedule is level is explicitly assigned to the executive administrator.

Proposed new subsection (c)(3)(B) identifies the method for determining an interest rate for a borrower that requests principal maturity schedule that does not have level annual debt service payments. This subparagraph provides that the executive administrator determines the amount of the subsidy that the borrower would have had from a level debt service structure following the procedure identified in subsection (c)(3)(A) and using the interest rate reduction identified in subsection (c)(2). The executive administrator then determines the loan interest rate for the

debt service schedule requested by the borrower in the manner that as closely as possible provides the same amount of subsidy that would have been provided had the debt service payments been level.

Amendments are proposed to re-letter current subsections (c), (d), (e), and (f) accordingly and to change subsection references contained therein.

Melanie Callahan, Director of Fiscal Services, has determined that for the first five-year period the amendments are in effect there will be no fiscal implications to state government as a result of enforcement and administration of the amended sections and no impact to local governments.

Ms. Callahan has also determined that for the first five years the amendments as proposed are in effect the public benefit anticipated as a result of implementing the amended sections will be improved clarity of the rules that will assist public water systems to evaluate the merits of the DWSRF. Additionally, the new provisions relating to identification of interest rates for loans will provide incentives to public water systems that construct water systems improvements for disadvantaged communities that require assistance to achieve compliance with national drinking water standards. Ms. Callahan has further determined there will be no increased economic cost to small businesses or individuals required to comply with the amended sections as proposed because the provisions apply only to political subdivisions applying for board assistance.

It is estimated that the rule amendments will not adversely affect local economies because the proposed amendments relate only to the level of financial participation of the state in local projects. Indeed, by the state financially contributing to these projects, the local economies should be positively affected.

Comments on the proposed amendments will be accepted for 30 days following publication and may be submitted to Jonathan Steinberg, Attorney, (512) 475-2051, Texas Water Development Board, P.O. Box 13231, Austin, Texas, 78711-3231, or by e-mail to jonathan.steinberg@twdb.state.tx.us or by fax at (512) 463-5580.

Statutory authority: Water Code, §6.101 and §15.605.

Cross-reference to statute: Water Code, Chapter 15, Subchapter J; and Chapter 17, Subchapter L.

§371.52. Lending Rates.

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

(1) Average life--the number determined by dividing the sum of the payment periods of all maturities of a loan by the total principal amount delivered to the borrower;

(2) Borrower--each eligible applicant receiving a loan from the board;

(3) Delphis--Delphis Hanover Corporation Range of Yield Curve Scales;

(4) Loan interest rate--the individual interest rate for each maturity of a loan as identified by the executive administrator under this chapter;

(5) Market rate--the individual interest rate for each maturity of a loan payment that is the borrower's market cost of funds based on the Delphis index's scale for the borrower as identified under subsection (c)(1) of this section;

(6) Payment period--the number determined by multiplying the total principal amount due for an individual maturity as set forth in the loan by the standard period for the loan;

(7) Standard period--the number identified by determining the number of days between the date of delivery of the funds to a borrower and the date of the maturity of a bond or loan payment pursuant to which the funds were provided calculated on the basis of a 360 day year composed of twelve 30-day periods and dividing that number by 360.

(b) [~~(a)~~] Procedure for setting fixed interest rates.

(1) The executive administrator will set fixed rates for loans on a date that is:

(A) five business days prior to the adoption of the political subdivision's bond ordinance or resolution or the execution of a loan agreement; and

(B) not more than 45 days before the anticipated closing of the loan from the board.

(2) After 45 days from the assignment of the interest rate on the loan, rates may be extended only with the executive administrator's approval.

(c) Fixed Rates. The fixed interest rates for DWSRF loans under this chapter will be determined as provided in this subsection. The executive administrator will identify the market rate for the borrower, determine the amount of adjustment from the market interest rate appropriate for the borrower, apply the identified interest rate adjustment to the market rate for the borrower to determine the loan interest rate, and apply the loan interest rate to the proposed principal schedule, as more fully set forth in this subsection.

(1) To identify the market rate:

(A) for borrowers that will not have bond insurance and with a rating by a recognized bond rating entity, the executive administrator will rely on the higher of the Delphis scale for the current bond rating of the borrower or the Delphis 90 index;

(B) for borrowers with no rating by a recognized bond rating entity or for borrowers with a rating that is less than investment grade as determined by the executive administrator, the executive administrator will rely on the borrower's market cost of funds as related to the Delphis 90 index; or

(C) for borrowers with bond insurance and that are rated by a recognized rating entity or for borrowers with bond insurance and no rating by a recognized bond rating entity, the executive administrator will rely on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.

(2) The program is designed to provide borrowers with a 120 basis point reduction from the market rate based on a level debt service schedule. For borrowers to which §371.22(c) of this title (relating to Administrative Cost Recovery) must be applied or for borrowers which choose to have §371.22(c) of this title applied, the program is designed to provide borrowers with a 150 basis point reduction from the market rate based on a level debt service schedule. Notwithstanding the foregoing, in no event shall the loan interest rate as determined under this section be less that zero.

(3) To determine the loan interest rate, the following procedures will apply:

(A) Unless otherwise requested by the borrower under subparagraph (B) of this paragraph, the loan interest rate will be determined based on a debt service schedule that provides interest only will

be paid in the first year of the debt service schedule and in which the annual debt service payments are level, as determined by the executive administrator. The executive administrator will identify the appropriate Delphis scale for the borrower and identify the market rate for the maturity due in the year preceding the year in which the average life is reached. The executive administrator will reduce that market rate by the number of basis points applicable according to paragraph (2) of this subsection and thereby identify a proposed loan interest rate. The proposed loan interest rate will be applied to the proposed principal repayment schedule. If the resulting debt service schedule is level to the satisfaction of the executive administrator, then the proposed loan interest rate will be the loan interest rate for the loan. If the resulting debt service schedule is not level to the satisfaction of the executive administrator, then the executive administrator may adjust the interest rate for any or all of the maturities to identify the loan interest rate that as closely as possible achieves the interest savings applicable according to paragraph (2) of this subsection while maintaining the principal schedule proposed by the borrower.

(B) A borrower may request a debt service schedule in which the annual debt service payments are not level through the term of the loan, as determined by the executive administrator. In this event, the executive administrator will approximate a level debt service schedule for the loan amount and identify a proposed loan interest rate that provides for annual debt service payments that are level for the term of the loan following the procedures set forth in paragraph (1)(A) of this subsection. From the level debt service schedule, the executive administrator will determine the amount of the subsidy that would have been provided if the annual debt service payments had been level. The executive administrator will then identify the loan interest rate that as closely as possible provides the borrower the identified subsidy amount for the principal schedule requested by the borrower.

[(b) Fixed Rates. The fixed interest rates for DWSRF loans under this chapter are set at rates 120 basis points below the fixed rate index rates for borrowers plus an additional reduction under paragraph (1) of this subsection, or if applicable, are set at the total basis points below the fixed rate index for borrowers derived under paragraph (2) of this subsection. Using individual coupon rates for each maturity of proposed debt based on the appropriate index's scale, the fixed rate index rates shall be established for each uninsured borrower based on the borrower's market cost of funds as they relate to the Delphis Hanover Corporation Range of Yield Curve Scales (Delphis) or the 90 index scale of the Delphis. For borrowers with either no rating or a rating less than investment grade, the 90 index scale of the Delphis will apply. The fixed rate index rates shall be established for each insured borrower based on the higher of the borrower's uninsured fixed rate index scale or the Delphis 96 index scale.]

[(1) Under §371.22(c) of this title (relating to Administrative Cost Recovery) an additional 30 basis points reduction will be used, for total fixed interest rates of 150 basis points below the fixed index rates for such borrowers.]

[(2) For borrowers filing applications on or after September 21, 1997 for loans with an average bond life in excess of 14 years or, at the discretion of the board for borrowers filing applications on or after September 21, 1997 for loans which have debt schedules less than 20 years and which produce a total fixed lending rate reduction in excess of a "standard loan structure" (defined as a debt service schedule in which the first year of the maturity schedule is interest only followed by 20 years of principal maturing on the basis of level debt service), the following procedures will be used in lieu of the provisions of paragraph (1) of this subsection to determine the fixed lending rate reduction:]

[(A) The interest rate component of level debt service will be determined by using the 13th year coupon rate of the appropriate index of the Delphis scales that corresponds to the 13th year of principal of the standard loan structure and that is measured from the first business day on the month the loan application will be presented to the board for approval.]

[(B) Level debt service will be calculated using the 13th year Delphis Scale coupon rate as described in subparagraph (A) of this paragraph and the par amount of the loan according to a standard loan structure. For a loan which has been proposed for a term of years equal to a standard loan structure, the dates specified in the loan application shall be used for interest and principal calculation. For a loan which has been proposed for a term of years less than a standard loan structure or longer than a standard loan structure, level debt service will be calculated beginning with the dated date and based upon the principal and interest dates specified in the application, and continuing for the term of a standard loan structure.]

[(C) A calculation will be made to determine how much a borrower's interest would be reduced if the loan had been made according to the total fixed lending rate reduction provided in paragraph (1) of this subsection and based upon the principal payments calculated in subparagraph (B) of this paragraph.]

[(D) The board will establish a total fixed lending rate reduction for the loan that will achieve the interest savings in subparagraph (C) of this paragraph based upon the principal schedule proposed by the borrower.]

(d) [(c)] Variable Rates. The interest rate for DWSRF variable rate loans under this chapter will be set at a rate equal to the actual interest cost paid by the board on its outstanding variable rate debt plus the cost of maintaining the variable rate debt in the DWSRF. Variable rate loans are required to be converted to long-term fixed rate loans within 90 days of project completion unless an extension is approved in writing by the executive administrator. Within the time limits set forward in this subdivision, borrowers may request to convert to a long-term fixed rate at any time, upon notification to the executive administrator and submittal of a resolution requesting such conversion. The fixed lending rate will be calculated under the procedures and requirements of subsections [(a) and] (b) and (c) of this section.

(e) [(d)] Private and taxable borrowers. The interest rate for loan agreements for those borrowers receiving financial assistance who are determined to be private or taxable issuers will be 140% of the rate pursuant to subsections [(a),] (b), [and] (c), and (d) of this section.

(f) [(e)] NPNC borrowers. NPNC borrowers that issue tax-exempt obligations and that operate community/non-community water systems will receive interest rates pursuant to subsections [(a),] (b), [and] (c), and (d) of this section.

(g) [(f)] Adjustments. The executive administrator may adjust a borrower's interest rate at any time prior to closing as a result of a change in the borrower's credit rating.

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

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304307

Suzanne Schwartz
General Counsel
Texas Water Development Board
Proposed date of adoption: September 17, 2003
For further information, please call: (512) 463-7981

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 3. TEXAS YOUTH COMMISSION

CHAPTER 87. TREATMENT

SUBCHAPTER B. SPECIAL NEEDS OFFENDER PROGRAMS

37 TAC §87.75

The Texas Youth Commission (TYC) proposes new §87.75, concerning Mental Retardation Treatment Program. The new section will establish the Mental Retardation Program at the Corsicana Residential Treatment Center, a facility of the Texas Youth Commission. The specialized program will provide appropriate services for TYC youth who have been identified as mentally retarded. This section will establish admission criteria, program requirements, and release/transition options and procedures.

Don McCullough, 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. McCullough 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 providing appropriate services for TYC youth who have been identified as mentally retarded, and adapting the Resocialization program to enable the progress of such youth. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the section as proposed. No private real property rights are affected by adoption of this rule.

Comments on the proposal may be submitted to DeAnna Lloyd, Policy Coordinator, Texas Youth Commission, 4900 North Lamar, P.O. Box 4260, Austin, Texas 78765, or e-mail to deanna.lloyd@tyc.state.tx.us.

The new section is proposed under the Human Resources Code, §61.075, Determination of Treatment, which provides the Texas Youth Commission with the authority to order a youth's confinement under conditions it believes are best designed for the welfare of the youth and protection of the public.

The proposed rule affects the Human Resource Code, §61.034.

§87.75. Mental Retardation Treatment Program.

(a) Purpose. The Mental Retardation Treatment Program (MRTP) at Corsicana Residential Treatment Center (CRTC) is a specialized program for youth with Mental Retardation. The program will provide appropriate services for youth who have been identified as mentally retarded. The rule will establish admission criteria and procedures, and release/transition options for youth with mental retardation.

(b) Authorized Facility. The Corsicana Residential Treatment Center (CRTC) in Corsicana, Texas is the only facility authorized to administer the MRTP.

(c) Applicability.

(1) See (GAP) §85.29 of this title (relating to Program Completion and Movement of Other than Sentenced Offenders).

(2) See (GAP) §85.33 of this title (relating to Program Completion and Movement of Sentenced Offenders).

(3) See (GAP) §87.79 of this title (relating to Discharge of Mentally Ill and Mentally Retarded Youth).

(d) Admissions.

(1) Admission Criteria.

(A) Youth from a secure residential program may be admitted to the MRTP if a diagnosis of mental retardation has been established according to the guidelines published in the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders of the American Psychiatric Association.

(B) Priority for admission will be based on the extent to which the youth's ability to function in Texas Youth Commission (TYC) programs is impaired by his/her mental retardation.

(2) Admission Process.

(A) If youth is referred from a facility other than MOAU, the action is considered an administrative transfer according to (GAP) §85.29 of this title.

(B) The referring facility must complete the referral packet with the appropriate signatures and submit to the director of clinical services (DOCS) at CRTC.

(e) Program Requirements. The MRTP will adapt the agency's Resocialization program to enable the progress of youth diagnosed with mental retardation. These adaptations will be documented monthly in the youth's Individual Case Plan (ICP).

(f) Release and Transition Options.

(1) Youth in the MRTP who meet criteria for transfer or release according to (GAP) §85.29 of this title or (GAP) §85.33 of this title, may be transitioned to a less restrictive setting or paroled to the community.

(2) Youth may be transitioned from the MRTP to an alternative placement if their functional ability improves to a level at which they can continue to progress with identified program adaptations in a general program.

(3) Youth in the MRTP who have completed the initial minimum length of stay and are determined to be unable to progress in the agency's Resocialization Program due mental retardation in accordance with (GAP) §87.79 of this title shall be discharged.

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

Filed with the Office of the Secretary of State on July 15, 2003.

TRD-200304279
Steve Robinson
Executive Director
Texas Youth Commission
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 424-6014

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. TEXAS REHABILITATION COMMISSION

CHAPTER 106. PURCHASE OF GOODS AND SERVICES BY TEXAS REHABILITATION COMMISSION

SUBCHAPTER A. GENERAL

40 TAC §106.3

The Texas Rehabilitation Commission (TRC) proposes to amend §106.3 of Title 40, Chapter 106, Texas Administrative Code, authority for purchasing administrative goods and services. The change is being proposed to clarify TRC's authority for purchase of administrative goods and services.

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler 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 the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small or micro businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code §2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The amendment is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§106.3. Authority.

The Texas Rehabilitation Commission receives delegated purchasing authority for procuring administrative goods and services from 1 TAC §113.11 and Government Code, Chapter 2155 [~~§2155.144~~]. The legal authority for the Texas Rehabilitation Commission to enter into contracts is Title 7, §111.052, Human Resources Code. TRC will also comply with specific contracting procedures found in the Interagency Cooperation Act, Government Code §§771.001 - 771.010; Interlocal Cooperation Act (Government Code §§791.001, et seq.)

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

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

TRD-200304359

Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 424-4050

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CHAPTER 117. SPECIAL RULES AND POLICIES

40 TAC §117.10

The Texas Rehabilitation Commission (TRC) proposes a new §117.10 of Title 40, Texas Administrative Code, concerning complaints. The rule is being proposed to comply with the requirements of Human Resources Code §111.026(b).

Bill Wheeler, Deputy Commissioner for Financial Services, has determined that for the first five-year period the section is in effect, there will be no material fiscal implications for state or local government.

Mr. Wheeler 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 the agency's compliance with Chapter 111, Human Resources Code. There will be no material effect on small businesses. There is no material anticipated economic cost to persons who are required to comply with the section as proposed. In accordance with Government Code §2001.022, TRC has determined that the proposed rule will not affect a local economy.

Comments on the proposal may be submitted to Roger Darley, Deputy General Counsel, Texas Rehabilitation Commission, 4900 North Lamar Boulevard, Suite 7300, Austin, Texas 78751.

The new rule is proposed under the Texas Human Resources Code, Title 7, Chapter 111, §111.018 and §111.023, which provides the Texas Rehabilitation Commission with the authority to promulgate rules consistent with Title 7, Texas Human Resources Code.

No other statute, article, or code is affected by this proposal.

§117.10. Complaints.

Consumers and service recipients may be notified of the name, mailing address, and telephone number of the commission for the purpose of directing complaints to the commission by inclusion of the information:

(1) on each registration form, application, or written contract relating to participation in a program that is funded in any part by money derived from or through the commission;

(2) on a sign that is prominently displayed in the place of business of each person or entity engaging in a program that is funded in any part by money derived from or through the commission;

(3) in a bill for service provided by a person or entity engaging in a program that is funded in any part by money derived from or through the commission; or

(4) in other media for dissemination of information as determined 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.

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

TRD-200304358
Sylvia F. Hardman
Deputy Commissioner for Legal Services
Texas Rehabilitation Commission
Earliest possible date of adoption: August 31, 2003
For further information, please call: (512) 424-4050

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.78

The Railroad Commission of Texas has withdrawn from consideration the proposed amendments to §3.78 which appeared in the July 18, 2003, issue of the *Texas Register* (28 TexReg 5617).

Filed with the Office of the Secretary of State on July 18, 2003.

TRD-200304356
Mary Ross McDonald
Deputy General Counsel
Railroad Commission of Texas
Effective date: July 18, 2003
For further information, please call: (512) 475-1295

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS
SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.486

The Public Utility Commission of Texas has withdrawn from consideration the proposed new §25.486 which appeared in the March 21, 2003, issue of the *Texas Register* (28 TexReg 2441).

Filed with the Office of the Secretary of State on July 15, 2003.

TRD-200304272
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Effective date: July 15, 2003
For further information, please call: (512) 936-7223

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351. COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

1 TAC §351.701

The Health and Human Services Commission adopts new §351.701, relating to the establishment of an umbilical cord blood bank grant program as required by House Bill number 3572 of the 77th legislative session. House Bill 3572 requires the commission to establish a one-time grant program to assist in the establishment of an umbilical cord blood bank in Texas for recipients of blood and blood components who are unrelated to the donors of the blood. The rule is adopted with changes to the proposed text as published in the March 28, 2003, issue of the *Texas Register* (28 TexReg 2675).

The rule will expire on August 31, 2004.

Adopted §351.701 provides for the competitive award of a grant to provide financial assistance for the establishment of an umbilical cord blood bank. Both the initial grant awarded by the commission and any continuation or enhancement of the grant beyond the 2002-2003 state fiscal biennium are subject to the availability of appropriated funds. The grant is subject to the requirements of the Uniform Grant and Contract Management Standards Act, chapter 783, Government Code.

The adopted rule states that the grantee must provide services to recipients who are unrelated, by either blood or marriage, to the donors of umbilical cord blood and blood products derived from umbilical cord blood. The adopted rule requires the grantee to be either licensed, certified, or accredited by a competent regulatory authority or accrediting organization to operate as a blood bank, blood and tissue center, laboratory, or other health care facility authorized to collect, process, and preserve human umbilical cord blood donations. The adopted rule identifies regulatory and professional organizations that may provide such licensure, certification, or accreditation.

The adopted rule would require the grantee to enter into a contract with the commission that requires the grantee to operate an umbilical cord blood bank for at least eight years following the effective date of the grant. The adopted rule also describes grantee eligibility criteria.

The Commission received no written comments on the proposed rules within the 30-day comment period.

The new rule is adopted under 531.033, Government Code, which authorizes the Commissioner of health and human services to adopt rules necessary to carry out the duties of the Health and Human Services Commission under Chapter 531, Government Code, and House Bill 3572, enacted by the 77th Texas Legislature (Acts 2001, 77th Leg., R.S., ch. 1198, at 2574), which authorizes the Health and Human Services Commission to adopt rules to implement a program to award a grant for the establishment of an unrelated donor umbilical cord blood bank in Texas.

§351.701. Unrelated Donor Umbilical Cord Blood Bank Grant Program.

(a) Purpose. This section implements and is adopted in accordance with the requirements of House Bill 3572 enacted by the 77th Texas Legislature (Acts 2001, 77th Leg., R.S., ch. 1198, at 2574), which authorizes the Health and Human Services Commission to implement a program to award a grant for the establishment of an unrelated donor umbilical cord blood bank in Texas.

(b) Grant objectives. The grant awarded pursuant to this section is intended to improve public health in Texas through:

(1) the establishment of an umbilical cord blood bank to serve unrelated donors and recipients;

(2) operation of such services for a minimum period of eight years from the date of the grant award; and

(3) the support and promotion of medical and scientific research opportunities resulting from the operation of an unrelated donor umbilical cord blood bank.

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

(1) Blood bank--A facility that:

(A) obtains a human umbilical cord blood donation from an unrelated donor; and is either

(B) licensed, certified, or accredited as a blood bank, blood and tissue center, laboratory, or other health care facility that is authorized by state and/or federal law, rule or regulation to collect, process, and preserve human umbilical cord blood donations; or

(C) operated in compliance with professionally recognized standards regarding the quality and safety of collection of human umbilical cord blood donations, including, but not limited to:

(i) the American Association of Blood Banks or the American Association of Tissue Banks;

(ii) the American Society of Blood and Marrow Transplanters;

(iii) the Center for Biologics Evaluation and Research of the United States Food and Drug Administration;

(iv) the Foundation for Accreditation of Hematopoietic Cell Therapy;

(v) the International Society for Cellular Therapy;

(vi) the Joint Commission for Accreditation of Health Organizations; or

(vii) the Cord Blood Transplantation Study sponsored by the National, Heart, Blood, and Lung Institute of the National Institutes of Health.

(2) Commission--The Health and Human Services Commission.

(3) Donation--Human umbilical cord blood obtained from an unrelated donor and resulting from a live birth.

(4) Grant--The funding assistance authorized by House Bill 3572 enacted by the 77th Texas Legislature (Acts 2001, 77th Leg., R.S., ch. 1198, at 2574) and awarded pursuant to this section for the sole purpose of establishing an unrelated donor umbilical cord blood bank program in Texas.

(5) Grantee--The recipient of the grant awarded under this section.

(6) Services--Umbilical cord blood collection, storage, preservation, and/or processing services provided by a blood bank.

(7) Unrelated donor--A person who:

(A) is legally authorized or competent;

(B) voluntarily provides a donation; and

(C) is not related by affinity or consanguinity (as determined under Chapter 573, Government Code) to the recipient of the donation.

(d) General conditions of the grant. The grant awarded pursuant to this section, and any extension, continuation, or addition to such grant, are subject to:

(1) the availability of appropriated state funds;

(2) a competitive award process as established by the commission;

(3) the requirements of the Uniform Grant and Contract Management Standards Act, Chapter 783, Government Code and the rules and standards adopted by the Office of the Governor in accordance with Chapter 783, Government Code, and codified at Title 1, Texas Administrative Code. Sections 5.141, et seq.;

(4) the requirements of the contract executed by the commission with the grantee as required under subsection (f) of this section; and

(5) audit by the commission, the State Auditor's Office, or an entity approved by the commission of the grantee's performance of the services or compliance with the rules and standards adopted by the Office of the Governor in accordance with Chapter 783, Government Code, and codified at Title 1, Texas Administrative Code. Sections 5.141, et seq.

(e) Applicant eligibility criteria. A blood bank may apply for the grant awarded under this section and must, at a minimum, demonstrate:

(1) the ability to establish, operate, and maintain an unrelated donor umbilical cord blood bank in Texas and to provide related services, including, but not limited to:

(A) experience operating similar facilities in this state;

(B) affiliation or agreements with research institutions or other similar blood banks and facilities to conduct related research or improve the accessibility of umbilical cord blood services in Texas;

(2) possession of an appropriate, current license, certification, or certificate of good standing to operate as a blood bank;

(3) a plan to continue the operation of the unrelated donor umbilical cord blood bank beyond the term of the contract required by subsection (f) of this section, including an appropriate financial plan;

(4) the financial stability and resources sufficient to ensure the achievement of the grant objectives and operation of the unrelated donor umbilical cord blood bank;

(5) appropriate donor and recipient management plans, protocols, including long-term management plans where clinically appropriate;

(6) policies relating to non-discrimination regarding the selection and treatment of donors and recipients of donations on the basis of race, sex, national origin, or ability to pay;

(7) a quality improvement process or mechanism to:

(A) identify problems relating to the delivery of the services;

(B) measure and document improvement in the delivery of the services, and

(C) provide appropriate monitoring of patient outcomes, to the degree permitted under state and federal law and the informed consent of donors and recipients of donations.

(f) Contract. The grantee must enter into a contract with the commission that requires, among other things, that the grantee:

(1) operate and maintain an unrelated donor umbilical cord blood bank in this state in accordance with standards described in subsection (c)(1)(C) of this section;

(2) operate the blood bank at least until the eighth anniversary of the effective date of the contract;

(3) gather, collect, and preserve umbilical cord blood only from live births;

(4) comply with any financial or reporting requirements imposed on the grantee specified in the contract; and

(5) comply with all applicable federal and state laws, as amended, and their implementing regulations.

(g) Expiration. This section expires August 31, 2004.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304329

Steve Aragón

General Counsel

Texas Health and Human Services Commission

Effective date: August 5, 2003

Proposal publication date: March 28, 2003

For further information, please call: (512) 424-6576

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 17. MARKETING AND PROMOTION DIVISION
SUBCHAPTER C. TAP, TASTE OF TEXAS, VINTAGE TEXAS, TEXAS GROWN, NATURALLY TEXAS AND GO TEXAN AND DESIGN MARKS

The Texas Department of Agriculture (the department) adopts the repeal §17.58, and new §17.58, concerning the GO TEXAN Beef Program rules, with changes to the proposal published in the May 30, 2003, issue of the *Texas Register* (28 TexReg 4211).

The repeal and new section are adopted to allow the department to revise the section throughout to clarify requirements of the program, amend the definitions and change some requirements of the membership categories including an elimination of the requirement that cattle be grain fed, and to add a new membership category. The proposed repeal eliminates existing §17.58. New §17.58, as adopted, provides a statement of purpose, product requirements, membership categories and requirements, an application process, fees for application, and provides for scientific review panels to assist the department in the application review process for the GO TEXAN Beef Program.

The department received one comment on the proposal from an individual small beef producer. The commenter generally praised the work of the GO TEXAN program, but also stated that the rule, as proposed would serve to eliminate small beef producers from participating because they are not big enough to have a cattle processor that has a full-time grader or an electric simulator. The department agrees that the proposed rule should not have the effect of eliminating small beef producers from the program. In fact, the elimination of the grain fed requirement from the rule, was intended to allow for, not exclude grass-fed and small producers. Changes have been made to the proposal to clarify that small operators can use a different option than grading in order to qualify for the program.

Meat processors are not required by law to have their beef USDA graded; however, inspectors are required by law to be present at slaughter to ensure wholesomeness for any product being sold. The commenter stated that most small processors do not have electrical stimulation capabilities. The GO TEXAN Beef Program rules were not intended to be structured so that those producers who do not use them are excluded from the program. In fact, the Option 2 Sampling Plan is an alternative method for operations that do not utilize electrical stimulation and post-mortem aging. If beef meets the palatability and tenderness standards set forth in the sampling plan, then it is allowed into the GO TEXAN Beef Program without being formally graded. The commenter also provided some suggestions as to guidelines that could be followed to maintain quality in lieu of the rule requirements. These include dry aging, identifying source then culling, ultra sound, use of genetics from proven tender blood lines, breed selection, easy cattle handling techniques and a guarantee on the product. The department believes that a guarantee based on producers' guidelines for maintaining quality through source identification, culling, ultrasound records from proven tender blood lines, breed selection for superior grass feeding, or easy cattle handling techniques is not sufficient to qualify for this program.

The department is pleased to see growth and popularity amongst consumers in the all-natural, grass-fed beef market. The perceived health benefits from consumption of all-natural, grass-fed beef will no doubt be an important driver for continued success and market share. The department will continue to ensure strict safety and quality guidelines through compliance with the GO TEXAN Beef Program rules and regulations.

4 TAC §17.58

The repeal of §17.58 is adopted under the Texas Agriculture Code (the Code), §12.0175, which authorizes the department to adopt rules to administer a program to promote and market agricultural products grown or processed in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304326
Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Effective date: August 5, 2003
Proposal publication date: May 30, 2003
For further information, please call: (512) 463-4075

4 TAC §17.58

New §17.58 is adopted under the Texas Agriculture Code (the Code), §12.0175, which authorizes the department to adopt rules to administer a program to promote and market agricultural products grown or processed in Texas and to charge a membership fee, as provided by department rule, for each participant in the program.

§17.58. GO TEXAN Beef Program.

(a) Statement of Purpose; Applicability. The GO TEXAN Beef Program is established to provide a marketing program that adds value to raw Texas beef by allowing use of the Texas Department of Agriculture's GO TEXAN and Design mark only on raw beef products that meet important quality and palatability characteristics. This section provides that feedlot operations, harvest operations, fabricators and private label marketers may be certified as GO TEXAN Beef Program members if they meet the requirements of this section. This section shall apply only to 100% raw beef products, as defined in this section. Though processed beef products (products that have been altered from a raw state by the addition of seasonings or marinades or by being cooked using techniques indigenous to Texas' cooking cultures such as by BBQ, Tex-Mex, Southwestern cuisine, etc.) are not eligible for membership in the GO TEXAN Beef Program, they are eligible for membership in the general "GO TEXAN" Program, as set forth in this subchapter. Beef cattle producers may also qualify for membership in the general "GO TEXAN" Program as livestock producers.

(b) Product Requirements. Raw and non-processed beef products meeting the requirements outlined in this section will be eligible for certification as "GO TEXAN" 100% beef products as part of the GO TEXAN Beef Program. For purposes of this section, the word "non-processed" means a 100% beef product that has not been altered from its raw state by the addition of seasonings or marinades or by being cooked.

(c) Membership Categories, to include Feedlot Operators, Harvest Operations, Fabricators and Private Label Marketers.

(1) Feedlot operations. In order to be certified as a "GO TEXAN" feedlot, a feedlot must meet the following requirements:

(A) The feedlot must be located in Texas.

(B) The feedlot must participate in a beef safety and quality assurance program and may feed Vitamin E to the cattle certified for slaughter as a "GO TEXAN" 100% beef product.

(C) The feedlot must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(2) Harvest operations. In order to be certified as a "GO TEXAN" harvest operation, a facility including a beef packer or boxed beef supplier, must meet the following requirements:

(A) The facility must be located in Texas and must be inspected by the Texas Department of Health (TDH) or the United States Department of Agriculture (USDA).

(B) All cattle harvested by the facility for certification as a "GO TEXAN" 100% beef product must have resided in Texas a minimum of 100 days immediately prior to harvesting.

(C) The facility must employ practices to optimize palatability of beef cuts. All operations shall utilize the following practices:

(i) High voltage electrical stimulation of 300 volts or more along with a postmortem aging plan of 14 days or more, as approved by the commissioner and the scientific panel appointed by the commissioner; or

(ii) Another palatability-enhancing program that is validated with scientific data through the Option 2 Sampling Plan approved by the commissioner and the scientific panel appointed by the commissioner. Operations who do not utilize USDA's grading service may be exempt from grading requirements specified in subparagraph (D)(i) - (iii) of this paragraph and still admitted to the program if their Option 2 plan is approved by the Commissioner and panel. Copies of the plan are available through the Texas Department of Agriculture.

(D) Raw beef eligible for certification as a "GO TEXAN" 100% beef product must be of the following quality:

(i) Products of Prime, Choice or Select quality as defined by the USDA;

(ii) Products of Yield Grades 1, 2 or 3, as defined by the USDA;

(iii) Products coming from carcasses with a maturity score in the "A" maturity range, as defined by USDA;

(iv) Products coming from carcasses weighing less than 899 pounds; and

(v) Products not coming from carcasses with dark-cutting characteristics.

(E) The harvest facility must submit a GO TEXAN Beef Program application to the department in accordance with this section.

(3) Fabricators. For the purposes of this section, a fabricator is defined as a meat processing establishment that purchases wholesale cuts of meat and converts them into ready-to-cook cuts for the retail or foodservice market by such steps as portioning, grinding, cubing and other such practices. In order to be certified as a "GO TEXAN" fabricator, a fabricator must meet the following requirements:

(A) The fabrication facility must be located in Texas.

(B) The owner or operator must confirm that raw materials used will be 100% raw beef sourced back to a TDH or USDA inspected harvest facility, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) of this subsection, or the Option 2 Sampling Plan.

(C) The fabricator must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(4) Private label marketers. In order to be certified as a "GO TEXAN" private label marketer of 100% beef products, private label marketers must meet the following requirements:

(A) Marketers who have a raw beef product boxed for their own label by another harvest facility or fabricator must confirm that the raw materials used will be 100% raw beef sourced back to a harvest facility or fabricator located in Texas, and that such raw materials will meet the requirements of paragraph (2)(A) - (E) or paragraph (3)(A) - (C) of this subsection, or the Option 2 Sampling Plan.

(B) The private label marketer must submit a GO TEXAN Beef Program application to the department, including the name of the proposed beef products.

(d) Application Process.

(1) Application to use the GO TEXAN and Design mark in accordance with this section, shall be made in the same manner as provided in §17.52 of this title (relating to Application to Use the TAP, Taste of Texas, Vintage Texas, Texas Grown, Naturally Texas, or GO TEXAN and Design Mark).

(2) Applicants must certify on the application that all applicable GO TEXAN Beef Program requirements are met.

(3) The department may contact applicants to verify that all GO TEXAN Beef Program requirements are met.

(4) Except as otherwise provided in this section, all requirements for membership in the general "GO TEXAN" program shall apply to entities certified under this section.

(e) Fees. Applicants shall submit an annual fee in the amount of $25 at the time of application to enroll in the GO TEXAN Beef Program. The annual fee is prorated monthly for membership of less than one year. Companies will be billed the annual registration fee of $25 each membership year thereafter.

(f) Review Panels. Review panels provided for as part of the application review process under this section shall be appointed by the commissioner and shall be composed of three meat scientists with doctorate degrees in meat science and a background in research.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304327

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Effective date: August 5, 2003

Proposal publication date: May 30, 2003

For further information, please call: (512) 463-4075

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TITLE 7. BANKING AND SECURITIES

PART 7. STATE SECURITIES BOARD

CHAPTER 101. GENERAL ADMINISTRATION

7 TAC §101.1, 101.5, 101.6

The State Securities Board adopts amendments to §§101.1, 101.5, and 101.6 concerning general administrative matters. The rules were adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2830).

Grammatical errors and identifiers are corrected and the certification fee is adjusted to the equivalent fee charged by the Secretary of State.

Persons requesting certified copies are apprised of the corresponding charges and that cross-references are accurate.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304364
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 10, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 305-8300

CHAPTER 104. PROCEDURE FOR REVIEW OF APPLICATIONS

7 TAC §§104.1, 104.2, 104.4 - 104.6

The State Securities Board adopts amendments to §§104.1, 104.2, 104.4, 104.5, and 104.6, concerning procedures for review of applications. The rules were adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2831).

The rules are updated to reflect practice and an internal reorganization creating a single Registration Division within the Agency.

The rules reflects current terminology and practice and conform to other Board rules and the Texas Securities Act.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304365
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 10, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 305-8300

CHAPTER 113. REGISTRATION OF SECURITIES

7 TAC §113.4

The State Securities Board adopts an amendment to §113.4, concerning consent to service of process. The rule was adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2832).

The requirement that a resolution be filed with the consent of service in connection with an application to register securities is eliminated.

An unnecessary filing is eliminated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304366
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 10, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 305-8300

CHAPTER 114. FEDERAL COVERED SECURITIES

7 TAC §114.3

The State Securities Board adopts an amendment to §114.3, concerning consents to service of process. The rule was adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2833).

The requirement that a resolution be filed with the consent of service in connection with a notice filing for federal covered securities is eliminated.

An unnecessary filing is eliminated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Articles 581-28-1 and 581-5.T. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes. Section 5.T provides that the Board may prescribe new exemptions by rule.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304367
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Effective date: August 10, 2003
Proposal publication date: April 4, 2003
For further information, please call: (512) 305-8300

CHAPTER 133. FORMS

7 TAC §133.8

The State Securities Board repeals rule §133.8, a form concerning power of attorney. The rule repeal was adopted without changes to the proposed text as published in the April 4, 2003, issue of the *Texas Register* (28 TexReg 2833).

The repeal allows for the simultaneous adoption of a new power of attorney form.

The repeal eliminates an outdated form.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Denise Voigt Crawford
Securities Commissioner
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7 TAC §133.8

The State Securities Board adopts new rule §133.8, a form concerning power of attorney. The new section adopts by reference a shorter power of attorney form. The rule was adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2834).

The new form eliminates the need to file a corporate resolution.

The section adopts by reference a new form to replace existing §133.8, which is being simultaneously repealed.

No comments were received regarding adoption of the new rule.

The new rule is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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7 TAC §133.33

The State Securities Board adopts an amendment to §133.33, concerning uniform forms accepted. The rule was adopted without changes to the proposed text as published in the April 4, 2003 issue of the *Texas Register* (28 TexReg 2834).

The amendment eliminates a reference to a form that is no longer required to be filed.

A reference to an obsolete form is eliminated.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Texas Civil Statutes, Article 581-28-1. Section 28-1 provides the Board with the authority to adopt rules and regulations necessary to carry out and implement the provisions of the Texas Securities Act, including rules and regulations governing registration statements and applications; defining terms; classifying securities, persons, and matters within its jurisdiction; and prescribing different requirements for different classes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

SUBCHAPTER J. COSTS, RATES AND TARIFFS

DIVISION 2. RECOVERY OF STRANDED COSTS

16 TAC §25.263

The Public Utility Commission of Texas (commission) adopts an amendment to §25.263, relating to True-up Proceeding, with changes to the proposed text as published in the April 4, 2003 *Texas Register* (28 TexReg 2848). The amendment to §25.263 implements the provisions of Public Utility Regulatory Act (PURA) §39.262, which sets forth the requirements for the final true-up of stranded costs. The amendment modifies subsection (d)(1) to establish the true-up filing schedule required by PURA §39.262(c). This amendment is adopted under Project Number 27401.

The commission received written comments and reply comments on the proposed amendment from AEP Texas North Company and AEP Texas Central Company (collectively, the AEP Companies); Centerpoint Energy Houston Electric, LLC and Texas Genco, LP (collectively, Centerpoint); Office of Public Utility Counsel (OPC); Texas Industrial Energy Consumers (TIEC); and TXU SESCO Energy Services Company (TXU SESCO). Additionally, Reliant Resources, Inc. (Reliant) filed initial comments only, while the City of Houston filed reply comments only.

Summary of parties' original comments

TXU SESCO comments

TXU SESCO commented that the only aspect of the true-up proceeding to which it is subject is the retail clawback provision of PURA §39.262(e). However, TXU SESCO pointed out that the first requirement of §39.262(e)--that the price to beat exceeds the market price of electricity--is not likely to be met in its service area. TXU SESCO therefore stated its belief that no retail clawback will be required in its service territory. TXU SESCO indicated that it plans to make a filing with the commission after January 10, 2004 to demonstrate that its price to beat did not exceed the market price of electricity. Because such a filing would not constitute a full-fledged true-up filing in the manner envisioned by the commission's true-up rule, TXU SESCO does not believe that it is necessary to include it in the schedule for true-up filings.

The "retail clawback" provision contained in PURA §39.262(e) requires that, to the extent that the price to beat exceeds the market price of electricity, the affiliated retail electric provider shall credit such differences to the affiliated transmission and distribution utility. Even if TXU SESCO does not believe that its price to beat exceeds the market price in its service territory, the actual determination of this fact will be made by the independent third party described in §25.263(c)(2). Therefore, the commission concludes that it is appropriate to include TXU SESCO in the true-up filing schedule for the limited purpose of fulfilling the provisions of PURA §39.262(e), and establishes January 12, 2004 as TXU SESCO's filing date.

AEP comments

The AEP Companies supported the schedule contained in the proposed rule. The AEP Companies acknowledged that the true-up proceeding for AEP Texas North Company (and Mutual Energy WTU LP) should have as its sole issues the "retail clawback" calculation required by PURA §39.262(e) and the final fuel reconciliation. Because of the comparatively limited scope of the true-up proceeding for these companies, it will likely be less complex than the other cases.

With regard to AEP Texas Central, the AEP Companies commented that the proposed date of September 3, 2004 appears to be reasonable, based on current facts. AEP Texas Central has indicated its intent to sell its generation assets and expects the sale process to be effectively complete by September 2004.

The AEP Companies also expressed support for including in the rule a good-cause provision allowing a company to request an alternative true-up filing date if circumstances so warrant.

The commission generally concurs with the AEP Companies' comments and retains the originally proposed filing date for AEP Texas North Company. For AEP Texas Central Company, in recognition of the indefinite nature of the timing aspect of the sale-of-assets market-valuation method, the commission slightly alters the wording of the rule language to provide enhanced flexibility for the filing date. Specifically, the amendment changes the scheduling language for AEP Texas Central Company to "the later of September 3, 2004, or 60 days following completion of the sale of its generation assets." This slight modification to the language better accommodates the timing uncertainties related to when the sale of AEP Texas Central Company's generation assets will be completed.

The good-cause exception supported by the AEP Companies was included in the proposed rule, and the commission retains this provision on adoption.

Reliant comments

Reliant supported the proposed schedule. Reliant stated that the proposed filing date for Centerpoint is consistent with the time period that will be used for valuing Reliant's option to purchase all the shares of Texas Genco common stock owned by Centerpoint. Reliant did not offer specific comments on the filing schedules of other companies' true-up proceedings other than to agree that the proposed spacing of the filings would allow the commission the opportunity to effectively manage its resources when processing the filings.

Centerpoint comments

Centerpoint provided multiple reasons why it supports the proposed schedule that places it at the beginning of the filing sequence. The major reasons cited by Centerpoint include: 1) a January 12, 2004 filing date is necessary to effectuate Centerpoint's business separation plan as approved by the commission; 2) it has long been expected that Centerpoint would make its true-up filing on January 12, 2004, and there is no reason why Centerpoint should not be allowed to file on that date; 3) the commission has recently taken action in Centerpoint's final fuel reconciliation case anticipating a January 12, 2004 true-up filing by Centerpoint; and 4) requiring Centerpoint to file for its true-up proceeding after January 12, 2004 would be extremely costly to Centerpoint.

Centerpoint stated that, with regard to the first reason above, its business separation plan envisioned that stranded costs will be quantified using the partial stock valuation method allowed under PURA §39.262(h)(3), and that a key element of that plan is that Reliant Resources has an option, which can be exercised between January 10 and 24, 2004, to purchase the remaining stock of Texas Genco held by Centerpoint Energy. The option price is to be calculated in accordance with the partial stock valuation method prescribed in PURA §39.262(h)(3), including the control premium, if any. Centerpoint commented that the option held by Reliant Resources was an integral part of the business separation plan and that the plan met the requirements of PURA §39.051, which mandated the separation of integrated electric utilities into distinct business units. Centerpoint further commented that the above-described elements of the business separation plan were designed to coordinate the sales price of Texas Genco with the market value used in the stranded-cost true-up. This coordination is appropriate because it allows Centerpoint Energy to recover the book value of the former utility's generating assets--no more and no less. If Centerpoint is not permitted to file for the true-up of stranded costs by mid-January 2004, the market value determined under PURA §39.262(h)(3) could be different from the value used to price the option, and Centerpoint would recover more or less than the book value of the generating assets. Centerpoint stated in its comments that this potential deviation in values would expose it to risks and uncertainty that the approved business separation plan was carefully crafted to avoid.

With regard to the second reason cited by Centerpoint--that it has long been expected that Centerpoint would make its true-up filing on January 12, 2004, and there is no reason why Centerpoint should not be allowed to file on that date--Centerpoint commented that its need to file at the earliest possible date was apparent when Reliant Energy, Incorporated filed its Second Amended Business Separation Plan in August 2000. Centerpoint also pointed out that it specifically asked for a January 12, 2004 filing date in its comments filed July 16, 2001 in the true-up rulemaking proceeding. Given these facts, Centerpoint stated that it has been widely expected for almost two years that it would be allowed to file its case on January 12, 2004, and that assigning Centerpoint to a later date would now be perceived, particularly by the financial markets, as adverse to both Centerpoint Energy, Inc. and Texas Genco, LP. Centerpoint additionally stated that any suggestion that delaying its filing might increase the value of Texas Genco, LP would be pure speculation, and that it is not feasible to "time the market." Centerpoint also commented that there is no reason to delay its filing to allow the market to "mature," as the Legislature determined that scheduling the true-up proceedings two years after the opening of retail choice gave the market sufficient time to mature for purposes of assessing the market value of generating assets. Finally, Centerpoint argued that there is no practical reason why it should not be allowed to make its true-up filing on January 12, 2004, because it *wants* to file on that date. Even if other companies also desire an early filing date, that is still no reason to change Centerpoint's proposed filing date. Centerpoint stated that the true-up filings are important to all companies and, if necessary, the commission should be willing to accept multiple filings on the same date and process them accordingly.

To support its third reason--that the commission has recently taken action in Centerpoint's final fuel reconciliation case that anticipates a January 12, 2004 true-up filing--Centerpoint stated that all elements necessary for its true-up filing will be in place by January 12, 2004. Accordingly, there is no reason why Centerpoint should not be allowed to file on that date.

Finally, with regard to its fourth reason--that requiring Centerpoint to file for its true-up proceeding after January 12, 2004 would be extremely costly to the company--Centerpoint stated that, because carrying costs on true-up balances do not begin to accrue until the date of the commission's final order, it would cost Centerpoint approximately $35 - $45 million (based on current estimates of Centerpoint's stranded costs) in pre-tax earnings for every month it does not have a final order.

OPC comments

The central focus of OPC's initial comments was that Centerpoint's true-up filing should be delayed until later in 2004. OPC stated that allowing Centerpoint to file its true-up case first in the filing sequence will likely increase stranded costs because Reliant's option to purchase 81% of Texas Genco stock creates uncertainty for the 19% of traded stock used for the stranded-cost determination. OPC commented that the existence of the option has major consequences for the long-term prospects of Texas Genco because it will determine whether Texas Genco is associated with an affiliated retail electric provider and will also have implications for Texas Genco's future dividend policy. If the option is not exercised, it is possible that Texas Genco will be spun off into a separate independent entity or sold to another corporation. OPC pointed out that uncertainty about the long-term future of the enterprise translates into risk and thus exerts downward pressure on the stock price. However, OPC argued, the uncertainty regarding the option and any distorting effects on Texas Genco's stock price resulting therefrom could be eliminated if the stock price used for valuation of Texas Genco's assets reflects a period after the option has expired. OPC therefore argues that the commission should set a filing date for Centerpoint that is 30 to 60 days after the expiration of Reliant's option to purchase the shares of Texas Genco held by Centerpoint.

OPC also commented that, despite the fact that Centerpoint will likely be the most litigated of all the true-up filing and will therefore require the greatest amount of resources, those required resources will be the same regardless of the timing of Centerpoint's filing. Additionally, OPC noted that the existence of Reliant's option may raise significant issues as to whether stranded costs were adequately mitigated by Centerpoint. OPC stated that if a schedule is adopted that allows stock trading for the post-option period, it is possible that a contentious issue could be obviated or reduced, thus requiring less litigation time.

OPC additionally provided an alternative to Centerpoint filing first by suggesting that Texas-New Mexico Power Company (TNMP) be moved to the first position. OPC noted that TNMP has already sold its assets and, given the apparent lesser amount of stranded costs, its proceeding could perhaps be resolved more quickly than the other cases.

TIEC comments

Like OPC's comments, TIEC's comments were principally directed to the issue of Centerpoint's filing date. TIEC argued that, for a number of reasons (discussed below), Centerpoint should file its true-up case no earlier than May 28, 2004. With regard to the proposed filing schedule in general, TIEC essentially argued that the filing dates of Centerpoint and WTU should be switched--that is, WTU would file on January 12, 2004, and Centerpoint would file on May 28, 2004.

The first reason TIEC provided for its recommended schedule is that the Centerpoint filing will be extremely complicated and that consideration of the issues in the WTU and TNMP cases will benefit the consideration of the Centerpoint case. TIEC suggested that lessons learned in the administration of the earlier cases may enhance settlement possibilities.

The second reason TIEC provided is that the South Texas Project (STP) Unit 1 is currently out of service, and the market valuation of Texas Genco will be negatively impacted because of concerns about the plant's status. TIEC commented that if the coolant leak issue is not fully and favorably resolved prior to Centerpoint's filing, issues regarding the prudence of STP's operation and maintenance could become a part of the true-up case. Additionally, TIEC commented that the circumstances surrounding the leak problem have the potential to depress the stock price of Texas Genco, so it is appropriate to delay Centerpoint's true-up filing to increase the likelihood that STP Unit 1 will be returned to full service by the time of the filing and any negative impact on the stock price will have been reduced or eliminated.

The third reason cited by TIEC for moving Centerpoint's filing to a later date is that the capital markets for energy-related stocks are currently depressed relative to historical levels. A delay of Centerpoint's filing for several more months would allow the markets more time to return to more rational and historically normal levels, thus minimizing stranded costs. TIEC also pointed out that valuing assets during a time of historically low stock prices may raise a question regarding the commercial reasonableness of the valuation method, and TIEC provided recent examples of how some energy companies that have attempted to sell assets and/or stock in the current market have decided to withdraw their proposal once they determined that the current market is not attractive. TIEC commented that its recommendation that the commission allow more time for capital markets to improve is not a simple attempt to time the market, but rather, it is a request to follow the commercially reasonable practice of maximizing asset value by postponing a valuation until the markets have returned to more historically reasonable levels.

The fourth reason cited by TIEC for moving Centerpoint's filing to a later date is that Reliant's option to purchase Centerpoint's shares of Texas Genco has never been approved by the commission, and this creates uncertainty and likely increases stranded costs. TIEC commented that although the commission approved Reliant Energy, Incorporated's business separation plan, *it never approved the stock option* (emphasis in TIEC's comments). TIEC further stated that the commission found that approving the business separation plan does not preclude a review of whether Reliant Energy, Incorporated pursued commercially reasonable means to reduce stranded costs, raising the implication that the granting of the option may not have been commercially reasonable. Similar to OPC's comments, TIEC stated that the option creates uncertainty, and this uncertainty has a negative impact on the value of Texas Genco's stock because of stockholder concern that Texas Genco will be majority owned by Reliant, whose liquidity problems are common knowledge. Because of the option, TIEC argues that the current market value of Texas Genco stock is not based on its stand-alone value, but rather is heavily tied to the value of Reliant's stock.

The fifth reason provided by TIEC to delay Centerpoint's filing date is that such a delay will not create uncertainty regarding the full recovery of stranded costs. TIEC stated that stranded costs are not known and measurable until a filing is made under substantive rule §25.263. This rule--and the statute--provides that the market value of the common stock will be determined based on a 30-day period chosen by the commission out of the last 120 consecutive trading days before the filing. TIEC argues that it is irrelevant that Centerpoint granted Reliant an option the value of which is based on the 30-day average stock price out of the last 120 consecutive trading days prior to January 9, 2004. TIEC reiterated its comment that the commission never explicitly approved the option, and the fact that the valuation derived from the option may be different from the valuation conducted pursuant to PURA §39.262(h)(3) is a risk that Centerpoint alone has chosen to bear. Ratepayers should not have to bear this risk.

Summary of parties' reply comments

OPC replies

OPC replied to Centerpoint's comments regarding the use of Reliant's option as part of Centerpoint's approved business separation plan by stating that if Centerpoint files its true-up case prior to the conclusion of the option exercise period (January 10 - January 24, 2004), this will increase uncertainty surrounding the 19% of traded stock used for valuation purposes. OPC further replied that a more accurate valuation of Texas Genco's assets may be possible if the stock prices include the period after the option period has expired, thus reducing the possibility that uncertainty regarding the option has distorted the stock price.

Regarding Centerpoint's comments that "it has long been expected that Centerpoint would make its filing on January 12, 2004," OPC replied that such an expectation is based upon false assumptions, and that Centerpoint alone expected to file on that date. With respect to Centerpoint's comments that the commission recently moved the date of the interim hearing for Centerpoint's final fuel reconciliation to allow sufficient time to conclude that proceeding before January 12, 2004, OPC replied that moving up that hearing simply means that Centerpoint's final fuel reconciliation will be completed prior to the filing of the true-up case, regardless of when in 2004 such filing occurs.

The final point in OPC's replies was that it is incorrect for Centerpoint to claim that moving its filing date beyond January 12, 2004 would be extremely costly to Centerpoint. OPC stated that the Austin Court of Appeals recently affirmed that part of the true-up rule which states that true-up balances do not begin to accrue interest until the date of the commission's final order in the true-up case. OPC stated that because Centerpoint does not legally have any carrying costs until the date on which the commission decides that it has stranded costs, Centerpoint is precluded from arguing that delaying its true-up filing will increase its carrying costs.

TIEC replies

TIEC replied to Centerpoint's comments by stating that while PURA §39.051(b) mandated the separation of integrated electric utilities into three separate units, it did not mandate that one of the separated businesses provide an option to purchase the stock of one of the other businesses. Therefore, TIEC asserted, the option is irrelevant to both the approved business separation plan and the filing date of Centerpoint's true-up proceeding. TIEC further replied that, based upon the commission's statements in its final order for Reliant's business separation plan, Reliant had satisfied the statutory standards for business separation regardless of the presence of the stock option. Furthermore, TIEC stated that it is indisputable that the commission never approved the stock option.

TIEC also reiterated its comments that the presence of the stock option creates a cloud on the Texas Genco stock price that could result in higher levels of stranded costs. TIEC strongly expressed its belief that the truest market valuation of Texas Genco will occur only if the stock option lapses. TIEC stated that, through the use of the stock option, Centerpoint is attempting to create a new stranded cost valuation method not contemplated in PURA. TIEC argued that, given that Centerpoint has chosen the partial stock valuation method to determine the value of its generation assets, any payments that Centerpoint receives from an affiliate pursuant to a stock option are irrelevant to the stranded cost equation. Moreover, because the stock option had not yet been reduced to writing at the time the commission approved the final business separation plan, there has been very little, if any, regulatory review of the option. Therefore, TIEC argued, it is inappropriate to order that Centerpoint file its stranded cost true-up case in January so as to give effect to an option that has never been approved by the commission.

TIEC also replied that concern by Centerpoint about differences in timing between the true-up filing date and the option exercise could be resolved by an agreement between Centerpoint and Reliant to amend the option to provide for a different strike date. TIEC averred that Centerpoint granted Reliant the option at its own risk, and ratepayers should not be asked to bear the risk of a business decision between affiliated companies. Accordingly, TIEC argued, the stock option has no bearing on the timing of Centerpoint's true-up filing.

TIEC also stated in its replies that if the option lapses, regulatory complexity will be reduced. TIEC stated that, in the true-up case, the commission has full authority to determine whether the granting of the option was commercially reasonable and a normal business practice. TIEC stated that if Centerpoint's schedule is moved to May, as TIEC suggested, there is a greater chance that the stock option will not be exercised, and factual and legal arguments regarding the meanings of "commercially reasonable" and "normal business practices" as they apply to the stock option will not need to be a part of Centerpoint's case.

Regarding Centerpoint's comments that "it has long been expected" that Centerpoint would make its true-up filing on January 12, 2004, TIEC replied that TIEC has not expected such an outcome, nor apparently has OPC or the City of Houston. TIEC pointed out that, notwithstanding representations by Centerpoint, Reliant, and Texas Genco, there has never been certainty that Centerpoint's true-up filing would occur on January 12, 2004. TIEC further replied that the blame for any adverse impact--such as a negative perception by the financial markets--that would result from the commission setting a later filing date for Centerpoint would fall entirely on Centerpoint for making overly optimistic statements. Accordingly, the potential reaction of Wall Street, which does not consider the public interest, should not dictate to the commission when it should determine the market value of Texas Genco stock.

City of Houston replies

City of Houston filed reply comments only, and basically supported the comments filed by TIEC and OPC. City of Houston stated that Centerpoint's true-up proceeding will likely be the most complicated and contentious true-up case at least partially because the stock valuation method will be used as the basis for quantifying stranded costs. City of Houston added that the complexity of Centerpoint's case will be increased because several issues--involving hundreds of millions of dollars--relating to its final fuel reconciliation have been postponed for consideration until the true-up proceeding. City of Houston argued that, because TNMP's case is expected to involve a considerably lesser amount of stranded costs, it is more reasonable to schedule TNMP first in the filing sequence. Additionally, because of the expected less complex nature of TNMP's proceeding, any issues arising in that case that may be common in all true-up proceedings could be afforded more attention.

City of Houston stated that the more important reason to delay Centerpoint's filing is because of increased risk associated with uncertainty regarding whether Reliant will exercise the option to purchase Centerpoint's shares of Texas Genco. Like OPC and TIEC, City of Houston argued that delaying the filing date for Centerpoint until later in 2004 would allow additional trading days after the option is exercised or not exercised, and would allow additional time for the financial markets to return to more rational and historically normal levels. City of Houston also argued that delaying the filing date for Centerpoint would allow more time for the resolution of issues related to the service concerns of STP Unit 1. For the foregoing reasons, City of Houston recommended that the commission schedule TNMP's true-up proceeding first, followed by Centerpoint later in 2004.

AEP replies

The AEP Companies replied to TIEC's and OPC's comments by stating that while the AEP Companies have no position on the matter of moving the Centerpoint filing date, the commission should reject TIEC's effort to argue substantive issues regarding the scope of the true-up cases in this procedural rulemaking. The AEP Companies stated that TIEC's arguments are premature and unnecessary at this stage. Furthermore, the AEP Companies argued, TIEC's comments contain a critical legal error. To the extent that TIEC seeks to have the commission question the market valuation that results from one of the valuation methods provided for in PURA §39.262(h) or (i), it is seeking to indirectly do what PURA §39.252(d) says the commission cannot do directly--substitute its judgment for a market valuation of generation assets. The AEP Companies also replied to TIEC's comments regarding the shifting of AEP Texas North Company

to January 2004 by reiterating their support for the filing schedule as originally proposed, but acknowledging that AEP Texas North could be ready for filing at the earlier date if the commission finds that to be in the public interest.

Centerpoint replies

Centerpoint replied to TIEC's and OPC's comments by stating two basic points: 1) no utility, affiliated power generation company, affiliated retail electric provider, combination of those entities, municipal regulator, or nonaffiliated retail electric provider objected to the proposed schedule, and 2) only TIEC and OPC argued for a change in the schedule, and the basis for their arguments is the unsupported speculation that a delay in Centerpoint's filing might result in higher prices for the shares of Texas Genco.

Centerpoint replied that the bottom line is that TIEC and OPC seek a three- to five-month delay in Centerpoint's filing in an ill-advised effort to "time" the market, and that the benefits claimed by TIEC and OPC are entirely speculative because the Texas Genco stock price is as likely to fall as it is to rise during that time. However, Centerpoint argues, its economic damage is not speculative--the delay sought by TIEC and OPC will cost Centerpoint from $100 million to $200 million in lost carrying costs.

Centerpoint stated that TIEC and OPC have not presented any reason that justifies changing the proposed date for Centerpoint's filing in the true-up schedule, and the commission should not set dates based on speculation as to what might occur in markets affected by a variety of factors, including long term excess generating capacity, specific generating plant operations, fuel prices, and interest rates. Though most of these factors can and probably will change over time, what will not change in the near future is the factor that may have the largest impact on the value of generating assets in ERCOT--the fact that ERCOT will have generating capacity in excess of 15% until at least 2007. Any delay of a few months will not change the impact this excess capacity has on the value of Texas Genco stock.

Centerpoint included in its replies the argument that, in adopting a rule, a governmental agency must apply sound reasoning, and explain how and why it reached the conclusions it did. That is, the agency must summarize the evidence it considered, state a justification for its decision based on the evidence before it, and demonstrate that its justification is reasoned. The agency's explanation of the facts and policy concerns it relied upon when it adopted the rule must demonstrate that the agency considered all the factors relevant to the objective of the agency's delegated rulemaking authority and that it engaged in reasoned decision-making. Centerpoint argued that, in short, the commission cannot delay Centerpoint's filing based on TIEC's and OPC's speculation that delay might result in lowering stranded costs without hard evidence that such delay is more likely to lower than to increase costs and that the benefits of delay will outweigh the harm to Centerpoint the delay will cause.

Centerpoint further argued in its replies that no one can predict whether delaying Centerpoint's filing will reduce stranded costs; it is equally likely that delay will increase stranded costs. Centerpoint stated that what TIEC is actually seeking is to have the commission speculate on stock prices while imposing on Centerpoint additional carrying costs of $35 - $40 million per month for at least four and a half months. This speculation could result in stranded costs being higher or lower and is as likely to harm customers as it is to help them.

Centerpoint pointed out in its replies that when the Legislature passed the Texas Electric Choice Act (Senate Bill 7, Act of May 21, 1999, 76th Leg., R.S., ch. 405, 1999 Tex. Gen. Laws 2543) in 1999, it was determined that there would be a two-year period after the opening of retail choice before proceedings were conducted by the commission to calculate and true-up stranded costs. This established a neutral "test period" for determining the value of generation because no one could accurately project in 1999 what the generation market in ERCOT would be by January, 2004. Centerpoint argued that when the Legislature gave the commission the authority to set the schedule for the true-up filings, it intended to give the commission the ability to manage its resources, not to have the commission manipulate the legislatively determined test period or try to "time" the stock market.

In response to TIEC's comments that recent attempts to sell generating assets were unsuccessful, Centerpoint replied that TIEC ignores the fact that a number of sales and stock issuances (the data for which Centerpoint provided) of generating assets have occurred in recent months. In response to TIEC's argument that its recommendation for delay is "not a simple attempt to time the market," but rather a "request to follow the commercially reasonable practice of maximizing asset value," Centerpoint replied that a delay for the purpose of "maximizing asset value" is precisely an "attempt to time the market," but that TIEC ignores the illogic of its own statement.

Centerpoint also replied to TIEC's statement that "the capital markets for energy-related stocks are currently depressed relative to historical levels." Centerpoint stated that TIEC never specifies the "historical levels" and does not explain how or when the markets will return to those levels. Centerpoint adds that the more important question, however, is the very real question of whether it is logical to expect that investors' long term perceptions of the ERCOT market for generation, which is expected to have a surplus of capacity for at least four *years*, will materially change during a delay of four and a half *months* (emphasis in Centerpoint's reply comments). Centerpoint argued that it is purely speculative to say that the market for Texas Genco stock will change dramatically in that short of a time period, and the commission should not engage in such speculation.

In response to OPC's comments, Centerpoint replied that there is no evidence that the Texas Genco option decreases market value or that a more accurate value for Texas Genco's generating assets will be achieved by delaying Centerpoint's true-up filing. Centerpoint disagreed with the thrust of OPC's comments that the option held by Reliant to purchase the shares of Texas Genco held by Centerpoint creates uncertainty and thereby creates risks and exerts downward pressure on the shares of Texas Genco. Centerpoint stated that TIEC raises the same contention but goes a step further by asserting that the stock price of Texas Genco is artificially low because of the capital markets' negative perception of Reliant. Centerpoint replied that OPC's and TIEC's arguments, distilled to their essence, are simply that a control premium exists that should be applied to the Texas Genco stock because there is the possibility that Reliant could own the majority of Texas Genco stock rather than Centerpoint Energy, Incorporated or another party. Centerpoint stated that is an issue for the true-up proceeding and will be decided by the commission after a determination by a panel of experts in accordance with the specific procedures in PURA §39.262(h)(3). Accordingly, Centerpoint believes that none of OPC's or TIEC's contentions provide a basis for delaying Centerpoint's filing beyond January 12, 2004.

Regarding Reliant's option, Centerpoint replied that TIEC mischaracterizes the commission's actions regarding the option. Centerpoint stated that the commission approved Reliant's option when it approved Reliant Energy, Incorporated's business separation plan, and pointed out that Finding of Fact No. 52 in that Order on Rehearing stated:

"The commission finds that Reliant's proposed separation meets the requirements of PURA §39.051 whether the stock option is exercised or allowed to lapse. Consequently, there is no need for the commission to approve the stock option *as a separate matter*. The proposed stock option *is an integral part of the Second Amended Plan*, which the commission finds in this Order meets the separation requirement in PURA §39.051 (emphasis in Centerpoint's replies)."

Centerpoint further argued that, contrary to TIEC's assertion, the commission's Order on Rehearing does not imply that the granting of the option may have been commercially unreasonable. Centerpoint stated that in the Open Meeting in which the commission approved the business separation plan, Chairman Pat Wood stated that "on its own, the buy-back--or the stock purchase option does not trigger any higher burdens on the Company to rebut than any other normal business practice issue," and Commissioner Walsh stated, "I think we're saying the option is okay. We're not going to second guess that." Centerpoint argued that second-guessing the Reliant option is exactly what OPC and TIEC want the commission to do when they argue for delaying Centerpoint's filing date for its true-up proceeding.

Centerpoint also argued in its replies that OPC's and TIEC's arguments claim that the value of the Texas Genco stock will increase after the conclusion of the option period, but neither OPC nor TIEC offers any support for that claim. Centerpoint stated that TIEC attempts to tie the value of Texas Genco stock to Reliant stock and casts aspersions on the value of Reliant stock in order to conclude that "because of Reliant's financial problems, the presence of the stock option has a negative effect on the current price of Texas Genco." Centerpoint states that while it disagrees with TIEC's view of Reliant and the effect of the option on the value of Texas Genco stock, ultimately TIEC is defeated by its own argument. Centerpoint argues that if the Reliant option reduces Texas Genco's stock price, as TIEC claims, the stock will decline even more when Reliant exercises its option and makes Reliant ownership of the majority of the stock a reality, rather than just a possibility. Consequently, Centerpoint argues, if TIEC really believed its own contentions, TIEC would argue against any delay in Centerpoint's true-up filing.

Centerpoint stated in its replies that Reliant is the logical strategic buyer for Texas Genco because Reliant serves a significant load in the Houston area and therefore needs a significant amount of power in the geographical region where most of Texas Genco's generation is located. Thus, there is no reason to believe that the existence of the Reliant option exerts downward pressure on the stock of Texas Genco. Centerpoint points out that those utilities that did not separate into two separate holding companies as Centerpoint and Reliant have done have the same situation that the option was designed to achieve--an alignment of generating assets with the loads that the assets were traditionally used to serve. Therefore, there is no basis for assuming that the option creates any less value for Texas Genco's generating assets than if the assets were placed in Reliant to begin with. In short, Centerpoint argues, the existence of the Texas Genco option provides no basis for delaying Centerpoint's filing. Centerpoint again pointed out that, as discussed in the preamble and in Centerpoint's initial comments on the proposed rule, with regard to stranded costs, allowing Centerpoint to file its true-up case on January 12, 2004 will allow it to recover the book value--no more, no less--of the former utility's generating assets.

In response to TIEC's comments, Centerpoint stated that consideration of the WTU and TNMP cases before Centerpoint's will not benefit the consideration of Centerpoint's filing nor facilitate settlement. Centerpoint expressed its belief that these proceedings will be fact-specific cases involving different utilities that have chosen different valuation methodologies, and it is unlikely that decisions on the issues in the WTU and TNMP cases will be of any benefit in the consideration of Centerpoint's filing. Centerpoint believes that, in fact, it is more probable that the opposite of what TIEC suggests is true: processing a larger, more complicated case first could facilitate expedient consideration of the cases with fewer issues. Centerpoint also replied to TIEC's argument that for "settlement to be a viable possibility, key precedential issues need to be resolved." Centerpoint replied that TIEC never explains what are the "key precedential issues" applicable to Centerpoint that can be resolved in the WTU and TNMP cases. Centerpoint also argued that TIEC's statement that "parties must have time to process the complicated filings and to run and rerun revenue studies and rates" is shorthand for TIEC's saying that it will not even be in a position to consider a settlement until Centerpoint makes its filing, regardless of when Centerpoint makes the filing. Centerpoint therefore argued that taking TIEC's statements at face value, the chances of settlement are not affected by allowing Centerpoint to file its case on January 12, 2004.

With regard to TIEC's comments that the current outage of STP Unit 1 has the potential to depress the price of Texas Genco common stock, Centerpoint replied by first pointing out that STP Unit 1 represents less than 3.0% of Texas Genco's generating capacity. Centerpoint also argued that a number of factors go into the pricing of Texas Genco stock and that TIEC's arguments unrealistically assume that investors in generating assets will focus only on short-term operational issues at one generating unit. Centerpoint argued that there is no reason to believe that investor perceptions of the risks associated with Texas Genco's ownership interest in STP will be higher or lower if Centerpoint's filing is delayed. Centerpoint reiterated its argument that TIEC has provided no evidence that factors affecting STP Unit 1 will cause the market price of Texas Genco's stock during any 30 consecutive trading days in the 120 trading days before May 28, 2004 (TIEC's suggested date for Centerpoint's filing) to be better than the 30 consecutive trading days chosen by the commission from the 120 trading days before January 12, 2004.

Commission response

Most of the parties' comments and replies in this rulemaking proceeding focused on the issue of Centerpoint's filing date. The filing schedule has specific valuation implications for Centerpoint, because Centerpoint's stranded costs will be determined primarily on the basis of the prices at which Texas Genco stock trades during the 120 trading days prior to filing. With regard to the majority of arguments that were offered by TIEC, OPC, and the City of Houston that Centerpoint's filing should be delayed, the commission is not persuaded that such arguments are well-founded. While the possibility exists that the amount of stranded costs could be reduced if the schedule were altered on the basis of these arguments, it is also possible that stranded costs could be increased. To a large degree, therefore, many of the arguments

for delaying Centerpoint's filing are speculative in nature. For example, TIEC, OPC, and the City of Houston all argued that delaying Centerpoint's filing date would allow for a longer period of time to pass during which the stock of Texas Genco could be expected to become more favorably valued. A delay in the scheduling of Centerpoint's filing for the purpose of waiting for a more favorable stock value is ultimately the common denominator of the arguments relating to both the suggestion that stock valuation levels should be allowed an opportunity to return to "historically normal" levels and the impact of the leak at STP Unit 1. In response to these points, the commission agrees with Centerpoint that the essence of such arguments is an attempt to "time the market," with the ultimate outcome of such attempts being inherently unpredictable. As Centerpoint argued, delaying the filing is as likely to result in lower stock prices that would be used in valuing Centerpoint's generation assets as higher stock prices. Consequently, the commission refrains from relying upon such arguments as justification for changing the proposed true-up filing schedule.

Other arguments offered by TIEC, OPC, and the City of Houston relate to learning-curve advantages that might be achieved by processing TNMP's case first and the facilitation of a settlement that could possibly be realized by delaying the filing of Centerpoint's case. The commission, however, agrees with Centerpoint that few critical issues, if any, will be common between the TNMP and Centerpoint cases primarily because the two companies will be relying upon different market-valuation methodologies. TNMP has sold its generating assets and will therefore be relying upon the sale-of-assets method for the determination of stranded costs, while Centerpoint will be using the partial stock valuation method. Moreover, the TNMP case will not include the issues of the capacity auction true-up and the control-premium determination. Consequently, there are not likely to be any meaningful efficiencies gained on these major, potentially controversial issues simply by having TNMP file first. Similarly, the commission agrees with Centerpoint's comment that any settlement in its case is unlikely to happen until *after* Centerpoint makes its filing, regardless of when that filing occurs.

The foregoing notwithstanding, the commission finds that, based on the extensive initial and reply comments with regard to the existence of Reliant's option to purchase the 81% of Texas Genco stock held by Centerpoint, sufficiently credible arguments have been put forth to justify a change in the order in which the companies will make their true-up filings. Specifically, the principal rationale underlying the commission's decision to alter the filing schedule relates to the uncertainty created by the existence of the Reliant option and the impact of this uncertainty on the price of Texas Genco stock. The commission believes that the existence of an unexercised option results in a stock price on the true-up filing date that is a less accurate proxy for the value of Texas Genco's assets than if the option had expired or had been exercised sufficiently in advance of the filing date. The commission concludes, however, that the magnitude and direction of the effects of this uncertainty cannot be determined in advance. Reasonable arguments can be made about whether the effect of the option on the price of Texas Genco Stock is large or small and even whether it is positive or negative--that is, it is conceivable that the option has a propping-up effect on the stock price of Texas Genco, a depressing effect, or little meaningful effect at all. Presumably, investors in Texas Genco assign some value to the quality of management and financial condition of the company that owns 81% of its stock, and presumably they are aware that Reliant has an option to acquire that 81%. In assessing the value of the stock, they can be assumed to have factored in some measure of likelihood that Reliant will acquire 81% of the Texas Genco stock, but they cannot be certain that the option will be exercised. Inevitably, there is a degree of uncertainty about who will be the majority owner of Texas Genco, who will manage it, the effectiveness with which it will be managed, and the financial condition of the majority owner. Thus, the removal of some of this uncertainty by the expiration or exercise of the option may result in a change in the value of the stock.

Therefore, in view of the uncertain impact of the Reliant option, the commission concludes that it is prudent to schedule the timing of Centerpoint's true-up filing on a date that enables the 120-day trading period used in the partial stock valuation methodology to encompass time periods both before *and* after the exercise date of the option. Accordingly, the commission is adopting true-up filing dates for TNMP and Centerpoint that are the reverse of the dates that were originally proposed for these companies. The true-up filing date for TNMP is scheduled to be not earlier than January 12, 2004 and not later than ten days thereafter, and the filing date for Centerpoint is scheduled to be not earlier than March 31, 2004 and not later than ten days thereafter. Because the Reliant option exercise period is January 10 - 24, 2004, scheduling Centerpoint's filing approximately two and one-half months thereafter, namely, on March 31, 2004, allows the 120-day valuation period that will be used in the true-up proceeding to span the time period before and after the exercise period of the option. Thus, if the existence of the option does in fact have an impact (in whichever direction) on the price of Texas Genco stock, the commission will have the discretion of using whichever time period provides the higher valuation for purposes of determining stranded costs, so as to minimize the costs to electric customers.

With regard to Centerpoint's claims that the commission's order in Docket Number 21956, *Application of Reliant Energy, Inc. for Approval of Business Separation Plan* effectively approves the option, the commission concludes that the order acknowledges the option as part of Centerpoint/Reliant's Second Amended Business Plan, but does not say anything about giving specific consideration to the option at the time of true-up, and certainly nothing about the option influencing the *scheduling* of the true-up filings. While the finding of fact that Centerpoint relied upon in its reply comments addresses the option from the perspective of the approval of an unbundling plan, it does not address the option from the perspective of valuing stranded costs. In fact, the commission did not "approve" the stock-purchase option as an independent transaction in the business separation plan proceeding. When taken as a whole, the business separation plan order makes it clear that the commission only evaluated the stock option as it related to the business separation findings, and decided that the business separation was adequate. The business separation plan order further finds that approval of the separation plan does not preclude a reasonableness review of certain business practices in the 2004 true-up proceeding. This is highlighted by the fact that the stock purchase option was not yet finalized and reduced to writing at the time of the business separation plan order. Accordingly, the commission finds that the statements in the Docket Number 21956 order regarding the option are not directly relevant to this rulemaking and that the establishment of the true-up filing schedule is not controlled by any findings in the final order in that proceeding.

With regard to Centerpoint's argument that any delay in its filing will be extremely costly to the company, this issue is tied to Centerpoint's claim that they have counted on the January

filing date for some time. Regardless of Centerpoint's expectations, the statute clearly says the true-up proceedings will be filed on a schedule established by the commission. The commission has never promised or guaranteed Centerpoint that it can file in January. Centerpoint has requested that date, but for reasons explained in this preamble, the commission has now chosen a different date. Centerpoint has presented no evidence that the stock purchase option agreement was conditioned either upon any regulatory condition to exercise or any conditions precedent based on the actions of, or approval by, this commission, particularly with respect to the filing date for the true-up proceeding. Additionally, given the timing of the execution of the stock purchase option agreement, Centerpoint could not have relied upon the commission's schedule as contained in the published version of this rule, which set the Centerpoint true-up filing date in January 2004, as this rule was published more than two years after the option was executed. Nor does the commission find any commitment in the business separation plan order to schedule Centerpoint's true-up proceeding in January 2004. The regulatory risk Centerpoint faces regarding the scheduling of its true-up filing is present for any company whose filing is later in the sequence. If the legislature had intended for companies to be compensated for this regulatory lag, it could have explicitly done so, but it did not.

Moreover, PURA §39.262(c) grants the commission broad authority to set a schedule for the true-up proceedings. The fact that the commission is charged with preparing a schedule clearly indicates that the legislature intended that different companies subject to true-up proceedings would make their filings at different times during 2004. Centerpoint's argument that its true-up should be filed in January because scheduling it later in the year will allegedly result in the imposition of carrying costs runs counter to the principles of setting a schedule. If, in fact, incurring carrying costs is a sufficient reason to schedule Centerpoint's true-up case no later than January, then the logical extension of that argument would be that any company scheduled after January might incur these costs and therefore they should likewise be scheduled in January--thus eliminating the need for any schedule.

The commission also notes that Centerpoint and Reliant in February 2003 agreed to an amendment to the option that provides an extension of time--up to 45 business days--in which Reliant can rescind its exercise of the option if it is unable by that date to secure financing for its purchase of the Texas Genco shares on terms reasonably acceptable to Reliant, despite the exercise by Reliant of commercially reasonable efforts to obtain such financing. Setting Centerpoint's true-up filing date on March 31, 2004 allows the 45-day period to pass, and eliminates or at least reduces any uncertainty related to a possible rescission by Reliant that may be reflected in Texas Genco's stock price.

Finally, with regard to the scheduling, the commission notes that TNMP is the first company to have completed the sale and apparent market valuation of its generation assets. TNMP has thus for some time been prepared for and ready to file its true-up application. Moreover, the true-up proceeding for TNMP can be reasonably expected to be less controversial than later filings by Centerpoint and AEP Texas Central Company because the amount of TNMP's apparent stranded costs is considerably smaller and because, as previously noted, the particulars of TNMP's case do not include other potentially controversial true-up issues such as the capacity auction true-up and the control-premium issue. As a result, the resolution of the TNMP true-up case is likely to be more readily and expeditiously achieved than Centerpoint's case, thus freeing up additional staff resources if needed for the more complex Centerpoint case.

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §39.262, which requires the commission to conduct a true-up proceeding for each investor-owned electric utility on a schedule and under procedures to be determined by the commission.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 39.252 and 39.262.

§25.263. True-up Proceeding.

(a) Purpose.

(1) The purpose of the true-up proceeding is to quantify and reconcile the amount of stranded costs, the differences in the price of power obtained through the capacity auctions and the power costs used in the excess costs over market (ECOM) model; the results of the annual reports; the level of excess revenues, net of nonbypassable delivery charges, from customers who continue to pay the price to beat (PTB); the reasonable regulatory assets not previously approved in a rate order that are being recovered through competition transition charges (CTCs) or transition charges (TCs); and the final fuel balances. The purpose of the true-up proceeding is also to provide for the recovery of regulatory assets not already approved for securitization that were to be considered in future proceedings pursuant to a commission financing order in a securitization case.

(2) An electric utility, together with its affiliated retail electric provider (AREP), its affiliated power generation company (APGC), and its affiliated transmission and distribution utility (TDU), shall not be permitted to over-recover stranded costs through the application of the measures provided in the Public Utility Regulatory Act (PURA), Chapter 39, or under the procedures established in PURA §39.262 and this section.

(b) Application. This section applies to all investor-owned transmission and distribution utilities established pursuant to PURA §39.051, their APGCs, and their AREPs. In addition, the reporting requirements of subsection (j)(6) of this section apply to all retail electric providers (REPs) serving residential and small commercial customers.

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

(1) Capacity auction total price of power ($/MWh)--The total (fuel plus non-fuel) capacity auction revenues for entitlements to capacity for the years 2002 and 2003 divided by the total capacity auction energy (expressed in MWh) scheduled to be delivered for those entitlements over the same time period.

(2) Independent third party--The party designated by the commission to perform the duties described in subsection (j) of this section.

(3) Mitigation--The total excess earnings and redirected depreciation applied to generation assets pursuant to PURA §39.254 and §39.256 or a commission order issued after 1996 that approved a utility's transition case.

(4) Net mitigation--Any mitigation that has not been reversed or refunded as of the date of the final order in the true-up proceeding.

(5) Net value realized--All compensation paid by a buyer for generation assets, including the buyer's assumption of debt, less any costs of sale such as legal fees, broker fees, and other reasonable transaction costs.

(6) Projected stranded costs--The value produced by the ECOM model and approved by the commission in the proceeding conducted pursuant to PURA §39.201.

(7) Regulatory assets--The generation-related portion of the Texas jurisdictional portion of the amount reported by the electric utility in its 1998 annual report on Securities and Exchange Commission Form 10-K as regulatory assets and liabilities, offset by the applicable portion of generation-related investment tax credits permitted under the Internal Revenue Code of 1986.

(8) Residential market price of electricity--The volume-weighted average price, less average nonbypassable charges (each expressed in cents per kilowatt-hour (kWh)), calculated by the independent third party for residential electric service provided by non-affiliated retail electric providers and non-provider of last resort (POLR) service providers competing in the TDU region. The price determined by the independent third party shall be based upon pricing disclosures pursuant to §25.475(e) of this title (relating to Information Disclosures to Residential and Small Commercial Customers) and other information provided to the independent third party.

(9) Residential net price to beat--The average residential PTB rate (expressed in cents per kWh) less the average nonbypassable charges (expressed in cents per kWh) applicable to residential customers.

(10) Small commercial market price of electricity--The volume-weighted average price, less average nonbypassable charges (each expressed in cents per kWh), calculated by the independent third party for small commercial electric service provided by non-AREPs and non-POLR service providers competing in the TDU region. The price determined by the independent third party shall be based upon pricing disclosures pursuant to §25.475(e) of this title and other information provided to the independent third party.

(11) Small commercial net price to beat--The average small commercial PTB rate (expressed in cents per kWh) less the average nonbypassable charges (expressed in cents per kWh) applicable to small commercial customers.

(12) Transferee corporation--A separate affiliated or non-affiliated company to whom an electric utility or its APGC transfers generation assets.

(13) Transmission and distribution utility (TDU)--A transmission and distribution utility that, pursuant to PURA §39.051, is the successor in interest of an electric utility certificated to serve an area.

(14) Transmission and distribution utility region (TDU region)--The affiliated transmission and distribution utility's service territory.

(d) Obligation to file a true-up proceeding.

(1) Each TDU, its APGC, and its AREP shall jointly file a true-up application pursuant to subsection (e) of this section according to the following schedule.

(A) Texas-New Mexico Power Company and First Choice Power, Inc.--not earlier than January 12, 2004, and not later than ten days thereafter;

(B) TXU SESCO Energy Services Company--not earlier than January 12, 2004, and not later than ten days thereafter;

(C) Centerpoint Energy Houston, LLC, Reliant Energy Retail Service, LLC, and Texas Genco, LP--not earlier than March 31, 2004, and not later than ten days thereafter;

(D) AEP Texas North Company and Mutual Energy WTU, LP--not earlier than May 28, 2004, and not later than ten days thereafter;

(E) AEP Texas Central Company and Mutual Energy CPL, LP--the later of September 3, 2004, or 60 days following completion of the sale of its generation assets.

(F) Notwithstanding the schedule in subparagraphs (A) - (E) of this paragraph, the commission may allow a company, upon a showing of good cause, to file its true-up application on a different date.

(2) Each TDU that is a successor in interest of any utility that was reported by the commission to have positive ECOM, denoted as the "base case" for the amount of stranded costs before full retail competition in 2002 with respect to its Texas jurisdiction in the April 1998 Report to the Texas Senate Interim Committee on Electric Utility Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update," and such TDU's, APGC's, and AREP's, shall file the true-up application as required by subsections (f) - (k) of this section.

(3) All TDUs not described in paragraph (2) of this subsection, their APGCs, and their AREPs shall file the applications required by subsections (h) and (j) of this section.

(e) True-up filing procedures.

(1) Each TDU, APGC, and AREP shall file all testimony and schedules on which they intend to rely for their direct case in accordance with the true-up filing package prescribed by the commission.

(A) Within 20 calendar days of the filing of a true-up application, commission staff or any intervenor may file a motion stating that the filing is materially deficient. Any such motion shall include a detailed explanation of the claimed material deficiencies.

(B) If the presiding officer determines that an application is materially deficient, the TDU, APGC, and AREP shall correct the deficiencies within 30 calendar days. The deadline for final commission order shall be extended day for day from the date of initial filing until the corrections are filed with the commission.

(2) At least 90 days prior to the filing of the first true-up application scheduled by the commission, a utility's APGC shall file a notification of intent with the commission if it intends to utilize PURA §39.262(i) to determine the amount of its stranded costs for nuclear assets.

(3) The commission may initiate a generic proceeding to determine true-up issues that are common to multiple TDUs, APGCs, and AREPs. This proceeding may include updates to the ECOM model required by subsection (f)(2)(B) of this section, in the event a notification of intent is filed pursuant to paragraph (2) of this subsection. The commission may order further updates to any order approved in a generic proceeding pursuant to this section for any utility whose customers are not offered competition on January 1, 2002.

(4) As part of the true-up proceeding, the commission shall make a determination with respect to whether the TDU, the APGC, and the AREP have complied with PURA §39.252(d). If the commission finds that the TDU, the APGC, or the AREP have failed, individually or in combination, to fully comply with their obligations under PURA §39.252(d), the commission may reduce the net book value of

the APGC's generation assets or take other measures it deems appropriate in the true-up proceeding filed under this section. In making a determination as to compliance with PURA §39.252(d), the commission shall not substitute its judgment for a market valuation of generation assets determined under PURA §39.262(h) or (i).

(5) The State Office of Administrative Hearings shall employ expedited procedures during discovery in the true-up proceedings.

(6) The commission shall issue the final order for each proceeding filed under this section not later than the 150th day after the filing of a complete, non-deficient application. Notwithstanding the foregoing, however, the 150-day deadline may be extended by the commission for good cause.

(f) Quantification of market value of generation assets.

(1) Market value of generation assets shall be quantified using one or more of the following methods:

(A) Sale of assets method. If an electric utility or its APGC sells some or all of its generation assets after December 31, 1999, in a bona fide third-party transaction under a competitive offering, the total net value realized from the sale shall establish the market value of the generation assets sold. Within 30 days of closing, the utility or its APGC shall provide to the commission a detailed explanation, which may be filed confidentially, of the transaction and a description of the generating unit, property boundaries, fuel and parts, emission allowances, and other general categories of items associated with the sale, including any ancillary items related to the assets.

(B) Stock valuation method. The following method of market valuation without using a control premium may be used to value generation assets.

(i) If, at any time after December 31, 1999, an electric utility or its APGC has transferred some or all of its generation assets, including, at the election of the electric utility or the APGC, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, not less than 51% of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the true-up filing required by this section establishes the market value of the common stock equity in each transferee corporation.

(ii) The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.

(iii) The market value of each transferee corporation's assets that is determined as the sum of clauses (i) and (ii) of this subparagraph shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the affiliated electric utility or APGC.

(iv) The market value of the assets determined from the procedures required by clauses (i), (ii), and (iii) of this subparagraph establishes the market value of the generation assets transferred by the affiliated electric utility or APGC to each separate corporation.

(C) Partial stock valuation method. The following method of market valuation using a control premium may be used to value generation assets.

(i) If, at any time after December 31, 1999, an electric utility or its APGC has transferred some or all of its generation assets, including, at the election of the electric utility or the APGC, any fuel and fuel transportation contracts related to those assets, to one or more separate affiliated or nonaffiliated corporations, at least 19%, but less than 51%, of the common stock of each corporation is spun off and sold to public investors through a national stock exchange, and the common stock has been traded for not less than one year, the resulting average daily closing price of the common stock over 30 consecutive trading days chosen by the commission out of the last 120 consecutive trading days before the filing establishes the market value of the common stock equity in each transferee corporation.

(ii) The commission may accept the market valuation to conclusively establish the value of the common stock equity in each transferee corporation or convene a valuation panel of three independent financial experts to determine whether the per-share value of the common stock sold is fairly representative of the per-share value of the total common stock equity or whether a control premium exists for the retained interest.

(iii) Should the commission elect to convene a valuation panel, the panel must consist of financial experts chosen from proposals submitted in response to commission requests from the top ten nationally recognized investment banks with demonstrated experience in the United States electric industry, as indicated by the dollar amount of public offerings of long-term debt and equity of United States investor-owned electric companies over the immediately preceding three years as ranked by the publication "Securities Data" or "Institutional Investor."

(iv) None of the financial experts chosen for the panel shall have participated, or be employed by an investment house or brokerage house which has participated, in the business separation, securitization, or other activities related to the implementation of PURA Chapter 39 on behalf of the utility for which the market valuation is being determined.

(v) If the panel determines that a control premium exists for the retained interest, the panel shall determine the amount of the control premium, and the commission shall adopt the determination, but may not use the control premium to increase the value of the assets by more than 10%.

(vi) The costs and expenses of the panel, as approved by the commission, shall be paid by each transferee corporation.

(vii) The determination of the commission, based on the finding of the panel and other admitted evidence, conclusively establishes the value of the common stock of each transferee corporation.

(viii) The average book value of each transferee corporation's debt and preferred stock securities during the 30-day period chosen by the commission to determine the market value of common stock shall be added to the market value of its stock.

(ix) The market value of each transferee corporation's assets shall be reduced by the corresponding net book value of the assets acquired by the transferee corporation from any entity other than the electric utility or its APGC.

(x) The market value of the assets resulting from the procedures required by clauses (i) - (ix) of this subparagraph establishes the market value of the generation assets transferred by the electric utility or APGC to each transferee corporation.

(D) Exchange of assets method. If, at any time after December 31, 1999, an electric utility or its APGC transfers some or all of its generation assets, including any fuel and fuel transportation

contracts related to those assets, in a bona fide third-party exchange transaction, the stranded costs related to the transferred assets shall be the difference between the net book value and the market value of the transferred assets at the time of the exchange, taking into account any other consideration received or given.

(i) The market value of the transferred assets may be determined through an appraisal by a nationally recognized independent appraisal firm, if the market value is subject to a market valuation by means of an offer of sale in accordance with this subparagraph.

(ii) To obtain a market valuation by means of an offer of sale, the owner of the asset shall offer it for sale to other parties under procedures that provide broad public notice of the offer and a reasonable opportunity for other parties to bid on the asset. The owner of the asset shall provide to the commission copies of all documentation explaining and attesting to the utility's sale proposal.

(iii) The owner of the asset may establish a reserve price for any offer based on the sum of the appraised value of the asset and the tax impact of selling the asset, as determined by the commission.

(iv) Within 30 days of closing, the utility or its APGC shall provide to the commission a detailed explanation, which may be filed confidentially, of the transaction and a description of the generating unit, property boundaries, fuel and parts, emission allowances, and other general categories of items associated with the transfer, including any ancillary items related to the assets.

(2) ECOM Method. Unless an electric utility or its APGC combines all its remaining generation assets into one or more transferee corporations pursuant to paragraph (1)(B) or (C) of this subsection, the electric utility shall quantify its stranded costs for nuclear assets using the ECOM method.

(A) The ECOM method is the estimation model prepared for and described by the commission's April 1998 Report to the Texas Senate Interim Committee on Electric Restructuring entitled "Potentially Strandable Investment (ECOM) Report: 1998 Update." The methodology used in the model must be the same as that used in the 1998 report to determine the "base case."

(B) As part of the filing specified in subsection (d) of this section, the electric utility shall rerun the ECOM model using updated company specific inputs required by the model, updating the market price of electricity, and using updated natural gas price forecasts and the capacity cost based on the long-run marginal cost of the most economic new generation technology then available, as approved by the commission pursuant to subsection (e)(3) of this section. Natural gas price projections used in the model shall be forward prices of Houston Ship Channel natural gas.

(C) Growth rates in generating plant operations and maintenance costs and allocated administrative and general costs shall be benchmarked by comparing those costs to the best available information on cost trends for comparable generating plants.

(D) Capital additions shall be benchmarked using the 1.5% limitation set forth in PURA §39.259(b).

(g) Quantification of net book value of generation assets.

(1) For purposes of this section, the net book value of generation assets shall be established as of December 31, 2001, or the date a market value is established through a market valuation method under subsection (f) of this section, whichever is earlier.

(2) Net book value of generation assets consists of:

(A) The generation-related electric plant in service, less accumulated depreciation (exclusive of depreciation related to mitigation), plus generation-related construction work in progress, plant held for future use, and nuclear, coal, and lignite fuel inventories, reduced by:

(i) net mitigation;

(ii) the net book value of nuclear generation assets if quantification of ECOM related to those nuclear generation assets is determined pursuant to PURA §39.262(i); and

(iii) any generation-related invested capital recoverable through a CTC, exclusive of related carrying costs, projected to be collected through the date of the final order in the true-up proceeding.

(B) Above-market purchased power costs arising from contracts in effect before January 1, 1999, including any amendments and revisions to such contracts resulting from litigation initiated before January 1, 1999.

(i) The purchased power market value of the demand and energy included in the purchased power contracts shall be determined by using the weighted average costs of the highest three offers from a bona fide third-party transaction or transactions on the open market.

(ii) The bona fide third-party transaction or transactions on the open market shall be structured so that the above-market purchased power costs are determined pursuant to subclause (I) or (II) of this clause.

(I) A transaction may be structured so the electric utility pays a third party to assume the utility's obligations under the purchased power contract. The weighted average of the three highest offers received in the transaction establishes the above-market purchased power costs.

(II) A transaction may be structured so a third party pays the utility to take power under the purchased power contract. The difference between the net present value of obligations under the existing contracts at the utility's cost of capital and the weighted average of the three highest offers received in the transaction establishes the above-market purchased power costs.

(C) Deferred debits, to the extent they have not been securitized, related to a utility's discontinuance of the application of SFAS No. 71 ("Accounting for the Effects of Certain Types of Regulation") for generation-related assets if required by PURA Chapter 39.

(D) Capital costs incurred before May 1, 2003 to improve air quality to the extent they have been approved by the commission pursuant to §25.261 of this title (relating to Stranded Cost Recovery of Environmental Cleanup Costs).

(E) Any adjustments resulting from the commission's review of the TDU's, APGC's, and AREP's efforts pursuant to subsection (e)(4) of this section.

(h) True-up of final fuel balance.

(1) An APGC shall reconcile the former electric utility's final fuel balance determined under PURA §39.202(c).

(2) The final fuel balance shall be reduced by any revenues collected by the AREP under any commission-approved fuel surcharge, from the date of introduction of competition to the utility's customers through the date of the true-up filing under this section, so long as the fuel surcharge is associated with fuel costs incurred during the time period covered by the final reconcilable fuel balance.

(3) If an electric utility or its TDU or APGC is assessed by another utility in Texas a fuel surcharge after 2001 for under-recoveries occurring through the end of 2001, the surcharged utility shall add the amount of surcharges and any associated carrying costs paid after 2001 to its final fuel balance.

(4) The final fuel balance, as adjusted by paragraphs (2) and (3) of this subsection, shall include carrying costs on the positive or negative fuel balance equal to:

(A) the weighted-average cost of capital approved in the company's unbundled cost of service (UCOS) proceeding, if the period until the date of the final true-up order is greater than one year; or

(B) the rate approved in §25.236 of this title (relating to Recovery of Fuel Costs) if the period until the date of the final true-up order is one year or less.

(i) True-up of capacity auction proceeds.

(1) For purposes of the true-up required by PURA §39.262(d)(2), and as provided for under §25.381(h)(1) of this title (relating to Capacity Auctions), the APGC shall compute the difference between the price of power obtained through the capacity auctions conducted for the years 2002 and 2003 and the power cost projections for the same time period as used in the determination of ECOM for that utility in the proceeding under PURA §39.201. The difference shall be calculated according to the following formula: (ECOM market revenues - ECOM fuel costs) - ((capacity auction price x total 2002 and 2003 busbar sales) - actual 2002 and 2003 fuel costs). For purposes of this paragraph:

(A) "ECOM market revenues" shall be the sum of rows 12 through 14 for the years 2002 and 2003 in the "Plant Economics" worksheet of the ECOM model underlying the commission-approved ECOM estimate in the company's UCOS proceeding;

(B) "ECOM fuel costs" shall be the sum of rows 33 through 35 for the years 2002 and 2003 in the "Cost Partition" worksheet of the ECOM model underlying the commission-approved ECOM estimate in the company's UCOS proceeding;

(C) The "capacity auction price" shall be the APGC's total capacity auction revenues derived from the capacity auctions conducted for the years 2002 and 2003 divided by that APGC's total MWh sales of capacity auction products for the years 2002 and 2003.

(2) If, as a result of not having participated in capacity auctions pursuant to §25.381(h)(1) of this title, an APGC is unable to determine a company-specific capacity auction price, the APGC may request in its true-up application a method using prevailing capacity auction prices from other APGCs for the calculation in paragraph (1) of this subsection.

(j) True-up of PTB revenues. This subsection specifies how the PTB will be compared to prevailing market prices pursuant to PURA §39.262(e). For purposes of this subsection, the term "small commercial customer" does not include unmetered lighting accounts unless such an account has historically been treated as a separate customer for billing purposes.

(1) An AREP is not required to perform the reconciliation described in PURA §39.262(e) for the residential or small commercial customer class if the commission has determined that the AREP has reached the applicable 40% threshold requirements prior to January 1, 2004, pursuant to filing requirements listed in §25.41(l) of this title (relating to Price to Beat) applicable to that class.

(2) If an AREP has not reached the applicable 40% threshold requirements prior to January 1, 2004, for either the residential or the small commercial class, or both, the net PTB for each such class must be compared to the market price of electricity for that class in the TDU region for the period January 1, 2002 through January 1, 2004 as provided in paragraphs (3) and (4) of this subsection.

(3) The independent third party shall compute the difference between the residential net PTB and the residential market price of electricity on the last day of each calendar-year quarter for the years 2002 and 2003. The price differential for each quarter shall be multiplied by the total kWh consumed by residential PTB customers of the AREP for that quarter. The results shall be summed over the eight quarters within the period from January 1, 2002 through January 1, 2004.

(4) The independent third party shall compute the difference between the small commercial net PTB and the small commercial market price of electricity on the last day of each calendar-year quarter for the years 2002 and 2003. The price differential for each quarter shall be multiplied by the total kWh consumed by small commercial PTB customers of the AREP for that quarter. The results shall be summed over the eight quarters within the period from January 1, 2002 through January 1, 2004.

(5) For each of the residential and small commercial classes, the AREP shall credit the TDU the lesser of the amounts calculated in subparagraphs (A) and (B) of this paragraph:

(A) $150 multiplied by (the difference between the number of residential or small commercial customers, as applicable, in the TDU Region taking PTB service from the AREP on January 1, 2004 and the number of residential or small commercial customers, as applicable, outside the TDU region being served by the AREP on January 1, 2004, provided that such customers are not receiving POLR service from the AREP); or

(B) the total differential between the net PTB and the market price of electricity calculated for the applicable class under paragraph (3) or (4) of this subsection.

(6) All REPs shall provide information to the independent third party as needed for the performance of calculations set forth in paragraphs (3) and (4) of this subsection. All data used in the calculations performed by the independent third party will remain confidential but shall be subject to audit by the commission.

(7) The functions of the independent third party shall be funded by the AREPs through one or more assessments made by the commission.

(k) Regulatory assets. To the extent that any amount of regulatory assets included in a TC or CTC exceeds the amount of regulatory assets approved in a rate order which became effective on or before September 1, 1999, the commission shall conduct a review during the true-up proceeding to determine any such amounts that were not appropriately calculated or that did not constitute reasonable and necessary costs. In addition, to the extent that any amount of regulatory assets approved for securitization in a commission financing order was not subsequently included in an issuance of transition bonds, that amount of regulatory assets shall be included in the TDU/APGC true-up balance under subsection (l) of this section.

(l) TDU/APGC True-up balance.

(1) The formula to establish the true-up balance between the TDU and APGC is shown in the following table. TDUs described in subsection (d)(3) of this section and their APGCs shall insert zero for all inputs in this equation except the input entitled "Final fuel balance calculated pursuant to subsection (h)."
Figure: 16 TAC §25.263(l)(1) (No change.)

(2) For TDUs described in subsection (d)(2) of this section, the TDU/APGC true-up balance shall be compared to projected stranded costs as provided in subparagraphs (A) - (C) of this paragraph. For TDUs described in subsection (d)(3) of this section, the TDU/APGC true-up balance shall be treated as provided in subparagraph (D) of this paragraph.

(A) If the TDU/APGC true-up balance is positive, and greater than projected stranded costs, then the commission shall increase the CTC (or establish a CTC, if no CTC has previously been approved for the utility), extend the time for the collection of the CTC, or both, to enable the TDU to collect the TDU/APGC true-up balance. The utility may seek to securitize any or all of the amounts determined under this subparagraph under PURA Chapter 39, Subchapter G.

(B) If the TDU/APGC true-up balance is positive, but less than projected stranded costs, then the commission shall reduce nonbypassable delivery rates in the amount of the difference by:

(i) reducing any CTC established under PURA §39.201;

(ii) reversing, in whole or in part, the depreciation expense that has been redirected under PURA §39.256;

(iii) reducing the TDU's rates; or

(iv) any combination of clauses (i), (ii), and (iii) of this subparagraph.

(C) If the TDU/APGC true-up balance is negative, then

(i) any CTC established under PURA §39.201 shall be eliminated;

(ii) net mitigation shall be reversed until exhausted or until a zero true-up balance is achieved, and the amount of net mitigation reversed shall be returned to ratepayers by the APGC through an excess mitigation credit; and

(iii) if net mitigation is exhausted and some amount of the negative true-up balance remains, then for companies that have securitized regulatory assets, a negative CTC shall be established based upon the lesser of the absolute value of the remaining negative true-up balance or the securitization amount on which any TCs are based. If the company has been issued a financing order by the commission authorizing the securitization of regulatory assets but securitization has not yet occurred, then the negative CTC will be implemented at the time the securitization bonds are issued. If the company has not received a financing order from the commission authorizing securitization of regulatory assets, then no negative CTC shall be established for purposes of this subsection.

(D) If the TDU/APGC true-up balance is positive, then a CTC shall be imposed to enable the APGC to recover any positive fuel balance. If the TDU/APGC true-up balance is negative, then a fuel credit shall be implemented to return the over-recovered fuel balance to ratepayers.

(3) The TDU shall be allowed to recover, or shall be liable for, carrying costs on the true-up balance. Carrying costs shall be calculated using the utility's cost of capital established in the utility's UCOS proceeding, and shall be calculated for the period of time from the date of the true-up final order until fully recovered.

(m) TDU/AREP true-up balance. The TDU shall bill the AREP for, and the AREP shall remit to the TDU, the amount calculated pursuant to subsection (j) of this section, plus carrying costs. Carrying costs shall be calculated using the utility's cost of capital established in the utility's UCOS proceeding, and shall be calculated for the period of time from the date of the true-up final order until fully recovered. The commission may reduce the TDU's rates to reflect the amounts due from the AREP.

(n) Proceeding subsequent to the true-up.

(1) The TDU shall file an application to adjust its rates within 60 days following the issuance of a final, appealable order on its true-up proceeding. In the proceeding, the commission may adjust the TDU's rates and any CTC, in accordance with PURA §39.262(g), and any excess mitigation credit. The commission may also allocate the recovery responsibility for such rates and any CTC to the TDU's customer classes.

(2) In the proceeding, the commission shall also consider adopting remittance standards, if necessary, with respect to the credits or bills as among the TDU, the APGC, and the AREP.

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 R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §§25.487 - 25.490

The Public Utility Commission of Texas (commission) adopts new §25.487, relating to Obligations Related to Move-In Transactions; §25.488, relating to Procedures for a Premise with No Service Agreement; §25.489, relating to Treatment of Premises with No Retail Electric Provider of Record; and §25.490, relating to Moratorium on Disconnection on Move-Out, with changes to the proposed text as published in the March 21, 2003 *Texas Register* (28 TexReg 2441). The commission withdraws §25.486, relating to Establishment of Service for Customers Disconnected for Non-Payment, as proposed in the March 21, 2003 *Texas Register* (28 TexReg 2441). Project Number 27084 has been assigned to this proceeding.

The transition from a regulated utility system to a competition-based system of utility regulation has generated a number of unanticipated problems that have required the commission, market participants, and customers to implement temporary solutions until more permanent solutions are developed. One area that has generated problems involves the switching of customers from one service provider to another. Under traditional service changes, a customer usually disconnects from one provider before obtaining service from the new provider. Because the service change could result in the customer being without essential electric service if there was a delay in the new connection, the commission, with the agreement of market participants, instituted a process which included a moratorium on disconnections during the service change. Although this process prevented unnecessary service outages, it led to confusion for both customers and service providers. The primary goal of these rules is to standardize the move-in and move-out processes, which will reduce

the number of customers without a retail electric provider (REP) of record, reduce the amount of unaccounted-for-energy (UFE) and implement performance standards to lift the moratorium on disconnections when a customer moves out of a premise. These rules will reduce costs to market participants, reduce confusion for customers, and provide certainty in the competitive retail electric market in Texas. These rules will further the legislative policy and purpose of protecting the public interest during the transition to, and in the establishment of, a fully competitive electric power industry.

Comments were received on April 21, 2003 and reply comments were received on April 30, 2003. No request for a public hearing was made within 30 days of publication; therefore no hearing was held.

The commission received written comments on the proposed rule and registration form from Reliant Resources, Inc. (RRI), Alliance for Retail Markets (ARM), AEP Texas Central Company and AEP Texas North Company (AEP Companies), CenterPoint Energy Houston Electric, LLC (CenterPoint), Office of the Public Utility Counsel (OPUC), Electric Reliability Council of Texas (ERCOT), TXU Energy Retail and Oncor Electric Delivery Company (TXU/Oncor), and Nueces Electric Cooperative (Nueces).

In addition to the proposed new sections, the commission requested comments on the following questions:

1. *Should the rule allow transmission and distribution utilities (TDUs) to bill retail customers, for past transmission and distribution charges, who have been receiving electricity but have not been billed because there is no REP of record associated with the premise?*

AEP Companies, CenterPoint, Nueces, and RRI suggested that it was appropriate to permit the TDU to bill a customer directly for past transmission and distribution charges in those instances in which the customer actually lived in the premise and received the service, but did not pay because there was no REP of record associated with the premise. RRI did not oppose allowing a TDU to bill end-use customers for wires charges as proposed in §25.489(g), as long as the TDU is able to justify the charges with verifiable data and the REP is not required to pass along any such charges to its customers through its own billing systems. RRI acknowledged that the Texas market structure in general does not contemplate the TDU having a traditional utility billing relationship with end-use customers, but pointed out that current market experiences suggest that this remedy is necessary to minimize financial damage experienced by TDUs and REPs as a result of customers not paying for service they receive. CenterPoint added that financial harm is imposed on TDUs if recovery is not permitted, noting that the disconnection moratorium for move-outs causes the company to lose at least $165,000 per month. CenterPoint explained that a TDU's rates were based upon the legitimate expenses incurred to provide electric service and at the time these rates were set, the commission did not contemplate the moratorium. In addition, CenterPoint argued that failure to bill a customer for energy used provides an incentive for a customer to not establish service with a REP when power is already provided.

AEP Companies emphasized that the current TDU tariff already allows the collection of delivery charges from a customer for periods when the customer has no REP of record. Under the Initiation of Delivery Service section (Section 5.3.1.1, Initiation of Delivery System Service Where Construction Services are Not Required) of the TDU's Tariff for Retail Delivery Service, a retail customer is responsible for selecting a REP and selection of a REP is a precondition to receipt of delivery service. Thus, according to AEP Companies, a retail customer who is using power without a REP of record is using the TDU's delivery system without authorization. Furthermore, AEP Companies referred to language in Section 5.4.7, Unauthorized Use of Delivery System, which provides that a person using the delivery system without authorization may be required to pay all charges, including the delivery charges associated with the estimated amount of electricity delivered without TDU authorization. AEP Companies emphasized that this section does not require that the customer use the TDU's system with any intent to defraud. Thus, AEP Companies asserted that the customer should be charged for the use of the delivery system, so long as the TDU can reasonably support its claim that a particular customer occupied the premises during the period in which the consumption occurred and can show that it reasonably estimated the consumption for that period.

OPUC argued that retail customers should not be billed if the termination request was not made by the previous REP or electric utility, when appropriate, or if a termination request was not processed. If, however, there is no indication that a termination was or should have been made, OPUC would not oppose backbilling the retail customer.

ARM and TXU/Oncor opposed allowing a TDU to bill retail customers who have no REP of record because it is inconsistent with the market structure, would cause significant customer confusion, and would negatively affect customer education concerning the competitive market. ARM stated that this practice would put REPs in an awkward position of running interference between the TDU and the customer. In addition, ARM argued that allowing TDUs to directly bill customers would likely prove to be a disservice to many innocent customers, noting that the TDU will not likely know who to bill or whether the current occupant of the premise was the occupant during the period when service was received without a REP of record. TXU/Oncor pointed out that after unbundling, Oncor no longer has a mechanism to bill such charges to end-use customers, and, even if it were possible, in the majority of cases it would not be cost- effective to devote the resources required to investigate and prove that a particular customer was actually the responsible party for prior usage at a premise with no REP of record. TXU/Oncor noted that the processes in proposed §25.489 and §25.490 will largely remedy the problem of customers with no REP or record and, therefore, recommended deletion of proposed §25.489(g). TXU/Oncor asserted that the benefits of allowing TDUs to recover these costs do not outweigh the significant customer confusion and practical challenges and expenses that would be caused by such a rule. At a minimum, TXU/Oncor proposed that the commission make any backbilling permissive instead of mandatory.

In reply, AEP Companies noted that, contrary to TXU/Oncor's situation, it has not found the costs associated with backbilling to be prohibitively high and should not be barred from backbilling because of mere speculation regarding these costs. AEP Companies also noted that ARM's comments are unwarranted because it is reasonable to expect that the TDU's bill would contain TDU contact information for customers.

The commission agrees with ARM and TXU/Oncor that a TDU should not be allowed to bill end-use retail customers for wires charges solely for the reason that there was no REP of record. The competitive retail market structure in Texas is unique in that customers no longer have a direct relationship with the TDU.

REPs are responsible for billing and customer service in the new market structure, not the TDU. Allowing TDUs to bill end use customers directly would cause customer confusion because customers would receive a bill from a company that is not their chosen electric provider and which is a company that the customer could never choose as their electric provider. In addition, the commission does not agree that providing TDU contact information on bills for wires charges is sufficient to resolve the customer confusion issue. TDU call centers and customer service groups are not likely to be sufficiently staffed and trained to communicate with customers about TDU bills because these functions largely moved to the affiliated REP when the integrated utility unbundled.

While the commission agrees with AEP that a moratorium on disconnecting service when a customer moves out was not contemplated when TDU rates were approved, the financial impact of the moratorium has been felt by REPs as well, because the cost of unaccounted-for-energy at such premises is charged to all REPs in the market. Allowing the TDU to directly bill for wires charges only injects customer confusion that is likely to harm REPs, while not allowing those REPs to recover their losses.

A TDU may bill an end-use customer only in conformance with its approved tariff. The standard Tariff for Retail Delivery Service referenced in substantive rule §25.214(d) (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities) requires the TDU to bill the retail customer's REP except in certain specific instances listed in Section 5.8.2 of the tariff. Section 5.8.2 does not authorize the TDU to directly bill the retail customer when the customer has no REP of record. A separate provision of the tariff, Section 5.4.7, Unauthorized Use of Delivery System, allows the TDU to bill a person found to be using the TDU's system without authorization. The commission finds that Section 5.4.7 is intended to primarily address situations involving meter tampering or bypass, or other instances in which the customer, or its agent, has engaged in fraud or misrepresentation in order to avoid payment for services. These were expected to be the only situations in which a customer would not have a REP of record. Language in this section of the tariff relating to "replacement or repair" of damaged meters and costs relating to "installment of protective facilities or of relocation" of the meter to prevent future unauthorized use are consistent with this intent. The tariff does provide that unauthorized use could occur by "other means," but that language should be interpreted in a manner consistent with the other provisions of Section 5.4.7, which imply an improper act by the customer before the use is deemed to be "unauthorized." The circumstance where a large number of customers have no REP of record is largely a result of the moratorium on disconnection on move-out, and was not contemplated when the market rules and tariffs were developed.

The commission acknowledges that it is *possible*, given the moratorium on disconnects on move-out, a customer could take advantage of the moratorium by: (1) knowingly request a move-out from their REP, with no intention of actually vacating the premise because they became aware that the premise would not actually be disconnected; or (2) move into a vacated premise where the power was still energized and intentionally not choose a REP because they are aware that they will not be billed by a REP). These circumstances could be construed as unauthorized use.

However, it is also certainly the case that a customer could have no REP of record in circumstances where the customer was not attempting to obtain service by improper means: (1) a customer's REP inadvertently requests a move-out for a premise; (2) a customer's enrollment or move-in request is not completed properly, due to a failure somewhere in the transaction pipeline; (3) a customer believes that he is enrolled with a REP and has in fact been receiving estimated bills from a REP, but the TDU does not show a REP of record in its system; or (4) a customer moves into a premise and enrolls with a REP, but a prior tenant did not.

In any of these cases, and potentially others, a current customer might receive a bill for prior months' wires charges after the customer either made extensive attempts at enrolling with or believed he or she was enrolled with a REP and thus had a good faith belief that their usage was authorized. Additionally, some customers may have been receiving and paying bills from a REP during the period of time for which the TDU would back-bill them. Lastly, the customer may not have been physically in the premise for the period in which the charges are being assessed.

The determination of whether or not a particular customer's use is considered an "unauthorized use" under the tariff should be made on a case-by-case basis. However, the comments indicate that there is confusion concerning whether the lack of a REP of record for a particular account should be considered an "unauthorized use" under the tariff. In order to clarify the confusion concerning the TDU's ability to directly bill an end-user customer, the commission is amending the rule to specify that direct billing is only authorized in those instances specified in the TDU's tariff that conforms to the commission's standard Tariff for Retail Delivery Service. Additionally, the commission is amending the rule to reflect that the lack of a REP of record, standing alone, does not constitute an "unauthorized use" under the tariff.

Finally, the commission agrees with TXU/Oncor that the processes in proposed §25.489 and §25.490 will largely remedy the problem of customers with no REP of record, on a prospective basis. New §25.490 permits the moratorium on disconnections on move-outs to be lifted if a TDU meets the performance standards established with respect to timely initiation and reconnection of service for customers. If a TDU meets standards of new §25.490, then it may begin disconnecting service to premises on a move-out requests, thus reducing the incidence of service locations without a REP of Record. Also, new §25.489 provides a process by which a TDU will be able to expeditiously remedy a circumstance where a service location does not have a REP of record by disconnecting service after providing proper notice. As such, no premise should be without a REP of record for a sustained period of time.

For these reasons, the commission amends §25.489(g) to clarify when a TDU may bill customers directly for wires charges and to clarify that the mere lack of a REP of record for a premise does not constitute unauthorized use under the tariff.

2. *If backbilling for past TDU charges is appropriate, should the TDU be required to pass the charges through the customer's REP, or should the TDU be permitted to bill the customer directly?*

CenterPoint recommended that the TDU pass the backbilling charges to the customer's REP because it follows the market design established by the Public Utility Regulatory Act (PURA) (i.e., that only REPs render bills directly to the customer). In support of its position, CenterPoint referred to PURA §39.107, which provides that a TDU must bill a REP for non-bypassable delivery charges and that a TDU can only provide billing agent services

to a customer on behalf of a REP. Moreover, CenterPoint pointed out that it does not have the system capability to directly bill an end-use customer due to the re-design of its billing systems to prepare for the retail market. ARM strongly opposed CenterPoint's recommendation, noting that it was wholly inappropriate to put the REP in the position of collecting charges incurred by a customer when the customer had no relationship with the REP.

AEP Companies, RRI, and Nueces recommended that the TDU bill the customer directly for all justifiable charges that were incurred while the customer was without a REP of record. After a customer selects a REP, RRI suggested that the selected REP bill the customer only for charges that were incurred while the new REP was the REP of record and that the TDU submit a bill to the customer within 35 days after the date the customer is switched to the new REP. RRI strongly opposed CenterPoint's recommendation to pass the charges through to the customer's REP, noting that it would lead to more confusion than if the TDU billed the customer directly. RRI noted that if a customer with no REP of record begins service with a new REP, and that REP issues the customer a bill for changes incurred prior to the period the customer/REP relationship was established, the customer is likely to question the legitimacy of those charges. According to RRI, this practice would likely lead to increased complaints, as well as a negative perception of competition in general. Nueces added that the TDU would be in a better position to address the questions and disputes that would arise.

AEP Companies indicated that when no REP is identified for the customer for the period in question, the customer's new REP cannot bill the customer for service used by that customer for that prior period. Therefore, according to AEP Companies, the only way the TDU can bill for delivery service is to directly bill the customer. AEP Companies noted, however, that it would be appropriate for the TDU to bill the REP in instances in which the customer had a REP but that fact was previously unknown to the TDU.

However, ARM and TXU/Oncor argued that the TDU should not be allowed to bill customers directly for past wires charges or to pass these charges to the customer's REP to bill the customer and serve as the collection agent for the TDU. They noted that direct billing by TDUs would cause customer confusion and that passing charges through to the REP would impair the customer's relationship with the REP and would financially obligate the REP for wires charges during a time period when the REP had no relationship with the customer. According to ARM, the customer is arguably not obligated to its current REP for such charges and the risk of those unpaid charges should not be inappropriately shifted from the TDU to the REP. Nonetheless, if the commission determines that a customer should be billed for wires charges incurred when a customer did not have a REP, ARM suggested that the only reasonable mechanism would be for the TDU to bill the customer directly.

After reviewing the initial comments, RRI indicated that it would support a decision to prohibit backbilling by the TDUs in this situation.

The commission agrees with ARM and TXU/Oncor that TDUs should not be allowed to bill customers directly for past wires charges except as authorized by their tariffs. The commission also agrees that the TDU should not pass these charges to the customer's REP to bill the customer and require the REP to serve as the collection agent for the TDU. The commission agrees that direct billing by TDUs would cause customer confusion and that passing charges through to the REP would impair the customer's relationship with the customer and would financially obligate the REP for charges incurred by the TDU during a time period when the REP had no relationship with the customer. The commission, as indicated above, amends §25.489(g) to prohibit a TDU from billing customers directly for wires charges except in accordance with its commission-approved tariff.

3. *Should the rule limit the TDU's backbilling to six months?*

RRI suggested that any rule addressing backbilling of TDUs be consistent with rules pertaining to REPs and should apply prospectively.

OPUC asserted that a TDU's backbilling should be limited to six months, consistent with the reasons behind §25.28 of this title (relating to Bill Payment and Adjustment) and §25.480(e) of this title (relating to Bill Payment and Adjustments). Nueces agreed and noted that the customer should not be required to pay the accumulated charges for the past period all at once.

ARM indicated that in situations in which a customer actually had a REP yet did not receive a bill from that REP (e.g., if ERCOT's database failed to identify the REP of record), the REP should be able to bill for all charges incurred by the customer while served by the REP, including the TDU's wires charges. Moreover, ARM suggested that a REP be allowed to backbill the customer for charges over six months if both the REP and the TDU can produce records to justify such charges as being the responsibility of the current customer at that premise. ARM pointed out that the Texas Civil Practice and Remedies Code §16.004(3) limits the collection of a debt to four years and that ARM was unable to identify any authority that would allow the commission to shorten this for the provision of electricity.

Further, AEP Companies argued that a six-month limitation on TDU backbilling in proposed §25.489(g) is contrary to Civil Practice and Remedies Code §16.070, which prohibits a contract or agreement from providing a limitation period shorter than two years. AEP Companies also emphasized that any removal of the statutory limitations with regard to overbilling is inconsistent with case law that holds that agreements in advance to waive indefinitely the statute of limitations is contrary to public policy. In addition, AEP Companies argued that a state agency has no authority to adopt a rule that is inconsistent with state law, citing *Railroad Commission of Texas v. Arco Oil and Gas Co.*, 876 S.W.2d 473, 481 (Tex. App-Austin 1994, writ denied) and *Gerst v. Oak Cliff Savings and Loan Association*, 432 S.W.2d 702, 706 (Tex.-1968). Further, AEP Companies contended that the commission has neither an express nor implied grant of authority to alter the limitation periods. According to AEP Companies, if the commission has authority to address limitations by virtue of its authority over billing, the commission can harmonize such authority with existing law by setting a limit on backbilling that does not conflict with the Texas Civil Practices and Remedies Code §16.070 (i.e., set the limit for longer than two years). Even if the rule limiting backbilling were found to be lawful, AEP Companies indicated that there are strong policy reasons for not applying the rule when the failure to bill earlier was due to circumstances beyond the TDU's control.

ARM generally agreed with AEP Companies, but emphasized that the commission should recognize that tension might exist if a REP can be backbilled for more than six months yet be unable to collect these charges from its customers, either because a customer cannot be found or because seeking recovery would irreparably harm the customer-REP relationship. Even if market participants may legally be entitled to backbill more than

six months, ARM indicated that it does not seem realistic that market participants would now attempt to bill for charges that have heretofore been recognized as uncollectible. ARM also proposed requiring TDUs to bill charges within three billing cycles and requiring REPs to bill charges within six billing cycles from the cycle in which the charges were incurred. According to ARM, the TDU's obligation to submit usage information in a timely manner should be embodied in the TDU's tariff.

CenterPoint stated that there should be no limitation on a TDU's backbilling in this situation, noting that neither PURA nor the commission's substantive rules limit a TDU's recovery of its delivery service charges that have never been billed.

OPUC disagreed with commenters who argued that backbilling for a TDU should be allowed for a period of four years, consistent with the Civil Practices and Remedies Code. OPUC noted that the commission already established a backbilling limit for REPs and the presumed justification is equally applicable to a TDU.

As discussed in the responses to Preamble Question Number 1, the commission has amended §25.489(g) to only permit a TDU to directly bill retail customers as permitted by its tariff and clarifies that "unauthorized use" of the delivery system is not established merely by the fact that there is no REP of record. The commission also notes that Section 5.4.7 of the Tariff for Retail Delivery Service governs the ability of a TDU to directly bill customers for unauthorized use. Therefore, the commission does not find a need to address that issue further here. The commission agrees that in situations in which a customer actually had a REP yet did not receive a bill from that REP, the REP should be able to bill for all charges incurred by the customer while served by the REP, including the TDU's wires charges, in accordance with §25.480, relating to Bill Payment and Adjustments. As part of Project Number 27084, the commission is currently reviewing §25.480 and will address ARM's suggestions to extend backbilling by a REP beyond six months during that phase of the project schedule. Accordingly, the commission has amended the proposed rule to remove any reference to backbilling limits.

4. *What recourse, if any, should the TDU have if the customer with no REP of record does not pay the TDU for backbilled wires charges?*

AEP and Nueces recommended allowing the TDU to disconnect service to a customer with no REP of record who does not pay for backbilled wires charges. AEP pointed out that the TDU tariff (Sections 5.4.7 and 5.3.7.2) authorizes the TDU to suspend or disconnect service to the customer for unauthorized use of service and to refuse to reconnect service until delivery charges are paid. Moreover, AEP suggested that Section 5.3.7.2 of the tariff allows a TDU to suspend service to a retail customer for failure to comply with the terms of an agreement with the TDU (e.g., for construction- related service), and Section 5.8.2 permits the TDU to directly bill the retail customer for those services. Further, AEP argued that no justification exists to treat customers differently for failing to pay for services depending on whether the services are provided by the REP and the TDU or services provided solely by the TDU.

ARM argued that in the event TDUs are allowed to directly bill customers with no REP of record, a TDU should not be allowed to disconnect a customer for non-payment of wires charges. ARM noted that neither the market nor market rules support giving any entity other than the affiliated REP or provider of last resort the right to disconnect a customer for non-payment. In addition, ARM contended that the consequences to the REP and the customer confusion associated with allowing a TDU to disconnect in these circumstances outweigh the potential benefits to TDUs. RRI and ARM suggested that the TDU seek restitution for unpaid debt in accordance with applicable law, such as through third-party collection agents.

CenterPoint indicated that PURA establishes that the TDU must bill the REP and, therefore, the REP would be the appropriate entity to render a bill to the customer. According to CenterPoint, the recourse for the TDU is set forth in the TDU tariff.

The commission agrees with AEP that the TDU tariff (Sections 5.4.7 and 5.3.7.2) authorizes the TDU to suspend or disconnect service to the customer for unauthorized use of service and to refuse to reconnect service until delivery charges are paid. However, as explained in response to Preamble Question Number 1, the commission finds that the TDU tariff regarding unauthorized use of a delivery system was never intended to apply to customers solely for the reason that there is not a REP of record.

As already explained above, the commission finds that §25.489(g) should be amended to prohibit TDUs from directly billing the end-use customer except as authorized by their commission-approved tariffs and to clarify that a customer's usage is not considered unauthorized use merely because there was no REP of record. Under the current market rules, only the affiliated REP or provider of last resort has the right to disconnect a customer for non-payment.

§25.486. Establishment of Service for Customers Disconnected for Non- Payment.

ARM, RRI, TXU/Oncor, and CenterPoint all commented that §25.486 should not be adopted as proposed because it would create an incentive for customers to avoid paying their bill by providing an expedited switch for customers who have been or are about to be disconnected for non-payment. Also, RRI, TXU/Oncor, and CenterPoint all cited various technical and market design concerns regarding the use of a move-in transaction for customers who have been or are about to be disconnected.

ARM argued against the adoption of proposed §25.486, arguing that that the policies reflected in the proposed rule are not in the public interest. ARM offered that the current market structure does not balance the rights and responsibilities of customers served by competitive providers, resulting in higher levels of bad debt expense for competitive providers in the deregulated market than in the regulated market. ARM stated that the rights and responsibilities of customers and REPs are not balanced, because the only consequence for a customer who seeks to avoid paying a bill is being transferred to the affiliated REP. ARM argued that §25.486 further weakens the balance of rights and responsibilities between customers and REPs, because the rule creates a special process that increases incentives for a non-paying customer to switch REPs, rather than pay the current REP what is owed. ARM argued that the commission should not reward customers who fail to meet their obligations to their provider with a benefit not available to others in the market. To do so makes it even more difficult for REPs to manage their credit risk, which threatens the viability of competition for all customers, especially residential customers. Therefore, ARM urged the commission to withdraw §25.486.

RRI stated that proposed §25.486 would create a perverse incentive for customers to avoid paying the REP of record by switching to a different REP. Additionally, RRI offered that the rule is not workable in practice. The rule requires the REP

to ascertain whether the customer is being disconnected for nonpayment. RRI argued that such a question is invasive to customers who are setting up service in the normal course of business and unlikely to elicit an honest response from customers who are setting up service in an attempt to avoid paying their current REP. Thus, the REP will not be able to determine reliably when §25.486 applies. RRI offered that even if a REP could determine when §25.486 is applicable, the REP has no practical way of determining if the out-of-cycle switch can be completed prior to the actual disconnect, as required by subsection (c)(2).

Rather than requesting that the commission withdraw the rule, RRI requested that the rule be re-focused. RRI offered that the rule should be used to specify when a REP should use a move-in transaction, as opposed to a switch request. RRI recommended that a REP use a switch transaction if the customer who requests service (1) is not a current customer of the REP; (2) does not indicate that he or she is moving into a premise or establishing service at a vacant premise; and (3) indicates that the premise for which service is being requested has power. Conversely, a move-in transaction should be used if the customer indicates (1) he or she is moving into the premise; (2) he or she is establishing service at a premise that has been vacant; or (3) the premise to be served is without power. RRI stated that under these guidelines, the REP does not have to ask every customer whether there is a pending disconnection. Rather, if a customer with a pending disconnection requests service, then the REP should initiate a switch and explain to the customer that a switch can take up to 45 days or more to become effective. At this point, the customer can ascertain that the pending disconnection may occur before the switch is complete, and the customer can then determine whether to proceed with the switch or contact the current REP regarding payment. If the customer proceeds with the switch and is disconnected prior to completion of the switch, then the new REP can cancel the pending switch and issue a move-in transaction.

CenterPoint also argued against adoption of §25.486, because the proposed rule is a significant departure from the customer protections established for this market. CenterPoint also stated that the rule conflicts with the application of approved tariffs, and presents conflicts with existing market systems and designs, which CenterPoint will not be able to overcome. CenterPoint requested the commission withdraw consideration of §25.486 because the retail market currently has well-established procedures for reconnection of a customer's service when the customer has been disconnected for nonpayment. Under the current market design, a customer that has been disconnected for nonpayment can reconnect service by either paying the bill or switching to another REP and requesting an out-of-cycle switch. CenterPoint argued that this market design should be strengthened, rather than changed, because the proposed changes bypass market protections that have been built into the current market. A switch transaction allows time for a customer to receive notice of the pending switch and either accept the switch or contact ERCOT to cancel the switch. In contrast, a move-in transaction does not allow for customer notification to prevent slamming, and move-in transactions are forwarded directly to the TDU's by ERCOT. Thus, using a move-in transaction allows a customer who has been disconnected for nonpayment to circumvent the market design, which sets an unhealthy precedent for sustaining sound competition in the retail market. CenterPoint suggested that rather than adopt the proposed new §25.486, the commission should clearly state that a move-in transaction should not be used if the only change is to the REP of record.

TXU/Oncor also argued against the adoption of §25.486, because the rule would serve as a roadmap for non-paying customers on how to switch REPs and avoid paying their bill or getting disconnected. TXU/Oncor stated that, currently, there is an incentive for customers to pay their bills, which would be destroyed by adoption of §25.486. Presently, if a customer is served by the affiliated REP or provider of last resort (POLR), then the customer is at risk for disconnection for non-payment. If a customer fails to pay the bill and switches to a new REP, then under the current rules, that switch could take several days to process. Thus, customers who do not pay are at risk of being disconnected, even if they switch REPs. Under the new rules, however, the consequences of failing to pay one's bill are mitigated, because customers who fail to pay and switch REPs are afforded an expedited switch process.

In its comments, ERCOT noted that because the rule deviates from the standard use of a move-in transaction, the commission should clarify that this is the only situation in which a move-in would be used for an existing customer.

In reply comments, CenterPoint stated that it strongly agreed with the comments of ARM and TXU/Oncor in that the commission should withdraw §25.486, as opposed to re-focusing the rule, as suggested by RRI. CenterPoint stated that the rule unfairly offers an expedited switch for non-paying customers that is not available to customers in good standing. CenterPoint also reiterated its position that the proposed rule constitutes a redesign of the market, circumvents commission-approved customer protections, and conflicts with existing system and processes used in the market with the application of approved tariffs.

In reply comments, RRI concurred with ARM and TXU/Oncor that the rule, as currently written, would have an adverse impact on the market. RRI stated that creating an avenue in the rules for customers to avoid payment and disconnection is likely to interfere with a REP's means of holding customers accountable for services rendered. In contrast to ARM and TXU/Oncor, RRI urged that the commission re-focus the rule to delineate the appropriate uses of move-in transactions and switch requests. Additionally, RRI stated that re-focusing the rule would comport with CenterPoint's suggestion that the commission strengthen the existing market design.

In reply comments, TXU/Oncor concurred with ARM, RRI, and CenterPoint in that this rule would enable customers to switch from REP to REP leaving bad debt in their wake. Additionally, TXU/Oncor strongly recommended that the commission withdraw proposed §25.486.

In reply comments, OPUC disagreed with the comments of ARM, RRI, CenterPoint, and TXU/Oncor. OPUC argued that the REPs already have procedures for requiring a customer to establish satisfactory credit; thus, the rule provides no inherent incentive for customers to avoid paying their bills. OPUC noted that it is the REP's obligation to establish a customer's credit standing and use the credit information and the deposit procedures as specified in the substantive rules to mitigate financial losses. OPUC also stated that it cannot be assumed that a customer who is disconnected for non-payment has been accurately and fairly billed by the customer's REP. Billing errors have been common under competition; thus, it is feasible that a disconnection notice could

be issued simply because the REP and customer fail to reach an agreement regarding charges.

The commission agrees with RRI, TXU/Oncor, and CenterPoint that there are various technical and market design concerns regarding the use of a move-in transaction for customers who have been or are about to be disconnected. In addition, the commission agrees with RRI that REPs should not be required to ascertain whether an applicant is being disconnected for nonpayment by another REP.

For these reasons, the commission declines to adopt §25.486 at this time. The commission will consider whether §25.483, relating to Disconnection of Service, should be amended to address these issues. In addition, ERCOT's Retail Market Subcommittee is addressing this issue and evaluating whether additional protocols or transactions should be adopted for a REP to reconnect a customer who has been disconnected by another REP. The commission suggests that RRI's comments regarding specifying when a move-in transaction is appropriate and when a switch transaction is appropriate be addressed in the taskforce.

Proposed new §25.486 was not intended to provide an incentive or means for customers to avoid paying their electric bill. The commission believes that a customer has an obligation to pay for the service provided by the chosen REP. Commission rules already address a REP's remedies for a non-paying customer (§25.482, relating to Termination of Contract, and §25.483, Disconnection of Service).

However, the commission notes that PURA §39.001 provides that a customer has the right to choose their REP, and does not place prohibitions on a customer doing so even if they are disconnected by their current REP for non-payment.

The commission disagrees with ARM that the proposed rule weakens a customer's incentive to pay an electric bill to a competitive REP beyond those incentives that currently exist in the marketplace today. The structure of the market whereby the affiliated REP and the POLR have the right to disconnect for non-payment and all other REPs may terminate service and drop non-paying customers to either the Affiliate REP or POLR, as appropriate, is not at issue in this proposed rule, and was fully addressed by the commission in Project Number 25360, *Rulemaking Proceeding to Amend Requirements for Provider of Last Resort Service.*

Although the commission is withdrawing proposed new §25.486 at this time, the commission finds that it is important that *how* a customer who has been disconnected for non-payment should be switched when that customer exercises the right to choose a different REP should be addressed. The commission agrees that such a process should not provide special benefits to allow non-paying customers to switch providers that are not available to other customers. All customers may currently request an out-of-cycle switch and pay the TDU charge for the special meter read. The commission believes that there should be a standard transaction so that a REP can switch a customer and energize service to that customer if they have been disconnected by another REP.

Various parties had other comments concerning §25.486 that were consistent with the comments summarized above or suggested modifications to improve it. As is noted above, the commission concludes that this section should not be adopted, and the issues raised by the parties should be addressed in conjunction with the possible amendment of §25.483 or in ERCOT working groups.

§25.487. Obligations Related to Move-in Transactions.

In its comments, OPUC was very supportive of the "safety net" process, as defined in the proposed rule, because it ensures that move-in customers receive electric service in a timely manner.

Nueces pointed out that this section applies to all retail electric providers (REPs) and municipally-owned utilities and electric cooperatives registered with ERCOT as competitive retailers (CRs). Cooperatives and municipal utilities are not REPs in that they do not register with the commission; however, they are registered with ERCOT as competitive retailers. Therefore, for the purpose of clarification, Nueces proposed that §25.487 and §25.488 be modified to indicate that these provisions are applicable to CRs as well as REPs.

The commission disagrees that it is necessary to clarify that these provisions are applicable to all competitive retailers. In §25.471(d)(12), a municipally owned utility or electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. Therefore the concern raised by Nueces is already addressed by the existing rules. Modifying these provisions to account for both competitive retailers and REPs is superfluous and likely to cause confusion.

Initial comments by ARM, TXU/Oncor, CenterPoint and reply comments by AEP Companies strongly opposed memorializing the safety-net workaround and recommended that §25.487 be withdrawn. These parties generally agreed that the focus should be on improving transaction performance in the market to eliminate the need for the workaround entirely. TXU/Oncor mentioned that through §25.88, relating to Retail Market Performance Measure Reporting, the commission has the authority to subject market participants to performance improvement plans and potential enforcement procedures for failing to process move-in transactions within the timeframes required by the ERCOT protocols and TDU tariffs. Through the enforcement of these performance measures, the need for the workaround should significantly decrease.

ARM suggested that the commission either withdraw the rule and impose a three month timeline for phasing out the safety-net process or revise the rule to provide for a sunset of the rule three months after it is adopted, with a three month timeline for phasing out the process imposed through the rule. RRI recommended that the commission adopt March 1, 2004, as a sunset provision for reviewing the effectiveness of the safety-net process. RRI argued that a sunset provision is necessary to ensure that market participants do not inappropriately rely on the safety-net process as a permanent solution. RRI proposed a new subsection to establish the recommended sunset provision. ARM suggested that if a sunset date is incorporated into the rule, then that date should be much earlier than March 1, 2004. In its reply comments, the AEP Companies also agreed with RRI's position that a sunset provision to review the effectiveness of the safety-net process is worthy of consideration. In reply comments, TXU/Oncor agreed with CenterPoint that the commission should leave the safety-net process as a workaround, so that the process can easily expire when it is no longer needed. However, if the commission adopts the proposed rule memorializing the workaround, TXU/Oncor recommended that the commission revise the proposed rule to include the sunset provision proposed by RRI. TXU/Oncor offered that RRI's proposal offers the most practical and flexible method for phasing out the safety-net process.

The commission agrees that a sunset date for reviewing the effectiveness of the safety-net process is appropriate and adopts RRI's proposal in new subsection (e).

In its comments, CenterPoint stated that codification of the safety net process could potentially deprive market participants of the flexibility needed to ensure that the process will support the market's needs for the future. CenterPoint suggested that the commission allow ERCOT's Retail Market Subcommittee (RMS) and Protocol Revision Subcommittee (PRS) to address the technical interplay surrounding the implementation of this workaround. In reply comments, CenterPoint stated that although a secondary or back-up safety-net procedure might always be necessary to ensure the timely initiation of service for retail customers, the safety-net process should not be the primary or predominant method for service initiation, and REPs should be encouraged to follow up with appropriate transactions in a timely manner. In reply comments, the AEP Companies reasserted their stance that if this rule is adopted, the safety-net process should only be used for legitimate purposes and not to by-pass standard rules and processes.

The commission agrees that the ultimate goal is to improve the market's transaction performance and eliminate the need for frequent use of the safety net workaround. The commission agrees with CenterPoint's reply comments that the safety-net process should not be the primary or predominant method for service initiation, and that REPs should be encouraged to follow up with the appropriate transactions in a timely manner. This is the express purpose of this proposed rule - to require that when a safety-net move-in is used, a REP must then follow it up by submitting an electronic move-in transaction. The commission concludes that incorporating this idea in the rule is appropriate in the current state of market development, and that the sunset provision provides an orderly way of removing the requirement when the workaround is no longer needed. Therefore, the commission declines to accept commenters' suggestions to not adopt this rule.

The AEP Companies suggested that the commission add language to clarify that the move-in date on the safety-net spreadsheet and the EDI transactions should match. Under the safety-net process, EDI transactions are matched to the items on the safety-net spreadsheet. The proposed rule suggests that the TDU use the date on the safety-net spreadsheet as the date when wires charges and fees may begin to accumulate for billing by the TDU. However, as the AEP Companies noted, there is no provision in the rule to address the possibility that no EDI transaction has been delivered to the TDU. Therefore, the ERCOT daily extract will be utilized to timely identify potential conditions in which the records of market participants are not consistent. AEP concluded that it should be incumbent on the REPs to monitor the daily extract and quickly identify any REP of record on the safety-net spreadsheet that is at variance with the REP identified on the ERCOT extract.

The commission agrees that matching the date on the safety net spreadsheet to the date in the EDI transaction is absolutely essential to the success of this workaround and adds clarifying language to the rule. The commission has amended subsection (d)(1) to clarify that the effective date on the safety-net move-in request will also be the effective date for the move-in when the applicable move-in electronic transactions are processed.

§25.487(b), Definition

TXU/Oncor, RRI, ARM, and CenterPoint all suggested amending §25.487(b), as well as subsection (d)(1), to make the safety-net process applicable regardless of whether the move-in transaction requires the installation of a new meter. TXU/Oncor argued that there is no clear reason to distinguish between a move-in where a meter is already installed versus one where a meter is being installed for the first time. Therefore, the safety net should apply to new meter installations, as long as the TDU has completed construction of the necessary distribution infrastructure to establish electric service at a premise. TXU/Oncor, as well as CenterPoint, pointed out that the safety-net process must be available for new premises. In addition, builders and developers may be inconvenienced or financially harmed by not receiving timely installations.

The commission agrees that §25.487(b) should be amended to clarify that the safety-net process is applicable regardless of whether or not there is a meter at the premise at the time the request is made.

TXU/Oncor suggested that subsection (b), which defines the safety-net process as pertaining to certain "residences," should be amended such that the rule applies to all "premises." According to TXU/Oncor, the safety-net process is successfully being used to expedite move-ins to not only residential premises but also commercial and industrial premises.

The commission agrees that §25.487(b) should be amended to clarify that the safety-net process is applicable to all premise types.

Finally, the AEP Companies suggested expanding and clarifying the definition of the term "safety-net process" in proposed §25.487(b). The AEP Companies pointed out that the language should clarify that the safety-net process should be used for legitimate purposes and not to by-pass standard rules and processes.

The commission agrees with AEP and makes the suggested change.

§25.487(c), Standard move-in request

RRI argued that proposed new §25.487(c), as currently written, implies that a REP should submit a move-in transaction any time service is established. RRI suggested that this was not intended because there are times when a switch is the more appropriate transaction. Therefore, RRI provided language to eliminate a possible interpretation that a move-in is the proper transaction for all service initiations.

The commission agrees that RRI's proposed language serves to clarify the rule's intent and has made the clarifying amendment.

§25.487(d), Safety-net move-in request

According to RRI, if a REP does not receive confirmation that the TDU has received the appropriate move-in transaction, it does not necessarily mean that a REP should submit a move-in through the safety-net process. Although the REP may not receive confirmation of the move-in, it is possible that the REP may receive a valid move-in rejection, in which case the safety-net process should not be initiated.

The commission agrees that RRI's modifications to the proposed rule serve to clarify that if the REP receives a valid move-in rejection, such as a "not-first-in" rejection, then the REP should not submit the safety-net transaction.

In addition, RRI argued against establishing a definitive two-day timeline for the REP to submit the move-in request when using the safety-net process. Each TDU in this market is unique

in its operational capabilities related to workarounds, and therefore, some TDUs may not need or want two days advance notice from the REP. Since this process is intended to be a workaround, TDUs should be allowed the necessary flexibility to establish effective timelines. CenterPoint expressed concerns about disrupting behind- the-scenes interaction between market participants and evolving processes with the overlay of static rules. However, CenterPoint suggested that if the proposed rule is adopted, the safety-net list should be sent to the TDU by the morning of the business day before the customer's requested move-in date. Receipt of the list by that time would provide the parties a reasonable opportunity to execute customer orders on the date requested without potentially over-riding electronic requests being sent through ERCOT.

The commission finds that it is important to implement a uniform practice in the market regarding when a safety-net move in request should be sent. The commission agrees with CenterPoint that requiring that the safety-net request be sent two days ahead might conflict with electronic requests being sent through ERCOT. Therefore, the commission concludes that the deadline for REPs to send the safety-net request should be closer to the effective date of the move-in. The commission has amended this section to require REPs to send the safety-net move-in by noon on the business day prior to the customer's requested move-in date. The rule is intended to provide minimum standards for this process. If a TDU is able to accommodate last minute requests by a REP, the rule does not prohibit the TDU from providing this level of service, as long as the REP and the TDU agree.

TXU/Oncor, RRI, CenterPoint, and ARM all suggested eliminating the requirement that the safety-net process only be used for premises at which a meter is already installed.

The commission agrees that this requirement should be deleted for the reasons indicated in comments on subsection (b) and has amended this subsection accordingly.

RRI commented that it supports requiring the TDUs to use the safety-net move-in date as the effective date for the initial meter read that denotes a change in REP ownership due to the move-in. RRI added that the TDU should not, however, issue any subsequent transactions associated with that move-in, such as an initial meter read, periodic consumption file, or wires invoice, until the REP submits the electronic transaction for that move-in. To do otherwise would cause a mismatch of ESI ID ownership between the TDU and ERCOT systems, resulting in manual error processing. The TDUs' withholding of the initial meter read, periodic consumption file, and wires invoices until an electronic move-in transaction is processed also provides an incentive to the REP to promptly submit the electronic move-in transaction, so that the REP can bill the customer with an actual meter read. ARM suggested that RRI's proposed changes to subsections (d)(2) and (d)(3), as proposed, should be modified simply to require that the REP submit the electronic move-in transaction in a timely manner. In addition, ARM advocated penalties for any other market participant that fails to take the steps necessary to complete a valid move-in submitted by a REP in a timely manner. ARM agreed with CenterPoint and TXU/Oncor that the REP's right to serve a customer should be established upon the execution or effective date of a move-in, not the date the move-in request is submitted. TXU/Oncor recommended that subsection (d)(2), as proposed, be amended to provide: "the REP establishes its right to serve the customer from the date the TDU executes the move-in by connecting service to the premise" and that such date also be the effective date for all wires charges and fees associated with that ESI ID. CenterPoint pointed out that the Texas Standard Electronic Transaction (SET) 867_04 Initial Meter Read Notification is recognized as establishing the REP's initial service date and the date from which the TDU's wires charges and fees will accrue. Without some amendment, the proposed rule would introduce unnecessary and burdensome complexity into both the wholesale and retail markets, possibly requiring modifications to existing systems and transactions, with no benefit to the customer.

The commission agrees with ARM, CenterPoint, and TXU/Oncor that the REP's right to serve a customer should be established upon the execution or effective date of a move- in, not the date the move-in request is submitted. The commission believes that this decision helps the market to remain consistent with established business processes and avoid potential out-of-synch conditions. The commission also concurs with RRI that the TDU should not issue any subsequent transactions associated with the move-in, except in response to an electronic transaction submitted by the REP.

RRI argued that the TDU should be entitled to late fees for delinquent payments of wires charges in the event that the REP is unable to complete the processing of an electronic move-in transaction prior to the date that the initial wires invoice would otherwise have been due if associated with an electronic move-in transaction. TXU/Oncor agreed with RRI regarding providing an incentive for REPs to promptly submit electronic move-in transactions after submitting a safety-net move in. TXU/Oncor stated that RRI's recommended revisions to proposed §25.487(d)(1) and (2) would address stacking service and synchronization issues associated with transactions related to move-ins. According to TXU/Oncor, RRI's recommended revisions make sense because of the progress that has been made in processing market transactions and the planned implementation of further enhancements.

The commission declines to amend the rule to incorporate a specific requirement that a REP must pay a late fee to the TDU in the event the REP is unable to complete the processing of an electronic move-in transaction prior to the date that the initial wires invoice would otherwise have been due if associated with an electronic move-in transaction. The TDU standard Tariff for Retail Delivery Service already allows the TDU to assess late fees in general when a REP does not timely pay for wires charges billed by the TDU. The requirements for late fees are within the scope of the generic tariff and not this rule.

TXU/Oncor suggested language to highlight that TDUs, REP's, and ERCOT may have responsibilities with regard to the transfer of information and transactions needed to finalize a move-in.

The commission agrees that all market participants have a responsibility to ensure the successful processing of move-ins and has amended the rule accordingly.

CenterPoint agreed that the REP should follow up all safety-net requests with a move-in transaction to ERCOT and that the appropriate response and notice transactions should be sent to the new REP and previous REP as soon as practical. CenterPoint indicated that most safety-net requests are the result of "not first in" move-in transaction rejections from ERCOT. As such, the most efficient way to accomplish the notice to the previous REP is for ERCOT to modify their system not to reject the move-in transaction for "not first in," thereby allowing the notice to be issued to the previous REP. These market design changes are currently

being addressed by retail market participants. In the interim, requiring TDUs and ERCOT to provide the notice manually would only add another layer of administrative burden to an already manual process with no significant value added. Also, CenterPoint stated that it has found that when the TDU notifies a previous REP for a premise, the TDU is often caught in the middle of a contractual dispute between the previous REP and the customer.

The commission adds language to clarify that the "appropriate notice … sent to any prior REP of record in the TDU's or ERCOT's system" in the rule merely refers to the 814_06 transaction that is sent by ERCOT to the CR who is "losing" the customer.

AEP Companies proposed adding the following provision to proposed subsection (d)(3): "within ten business days, an EDI Transaction should be submitted by the gaining CR, and the TDU should retain the right to bill wire charges to the REP that submits a safety-net spreadsheet even when an EDI transaction is not received."

The commission agrees that a specific timeframe for follow-up by the REP is necessary, but believes that ten days is too long. The commission amends the rule to require the REP to submit the EDI transaction on or before the fifth business day after the move-in was submitted through the safety net process.

§25.488. Termination of Service to a Premise with No Contract (now Procedures for a Premise with no Service Agreement).

Nueces commented that in each subsection that refers to a REP or a non-affiliated REP the words "or a CR" should follow the word REP but that these words would not be added in those instances where the reference is to an affiliate REP.

As noted in response to similar comments on §25.487, a municipally owned utility or an electric cooperative is only considered a REP where it sells retail electric power and energy outside its certified service territory. Therefore the concern raised by Nueces is already addressed by the existing rules. Modifying these provisions to account for both competitive retailers and REPs is superfluous and likely to cause confusion.

ARM stated that subsection (b) presumes that ERCOT will notify a REP that it is serving a premise for which the REP has no service agreement. ARM does not believe this to be true but stated that the REP will likely learn that it does not have a relationship with a premise, because either mail relating to the premise is returned or because someone calls the REP to complain that they are being billed for service at a premise for which they are not responsible. ARM also stated that they are concerned that the language in the rule regarding the REP's receipt of "notice from ERCOT that it is responsible for providing service…" misstates the REP's obligation. ARM stated that the REP is not responsible for serving a premise for which it does not have a service agreement and that this rule should not presume that such a responsibility exists. ARM suggested this provision be revised to apply when a REP "learns or has reason to believe" that it is providing service at a premise for which it does not have a service agreement.

The commission agrees with ARM that the REP will likely learn that it does not have a relationship with a premise by means other than a notification from ERCOT. The proposed language already presumes this and does not require that a REP receive such notification before proceeding under the options provided for in subsections (b)(1) and (2).

ARM and RRI argued that the rule should be revised to require that the REP utilize the move-out process in situations where the name of the customer is not known.

ARM expressed concern about the requirement that the process for transferring a customer to the affiliate REP for non-payment be used for a situation where the customer does not have a contract with the REP. ARM stated that Texas SET 1.5 will require a customer's name to be provided when the customer is transferred to the affiliate REP and argued that under the circumstances contemplated in this section, the only transaction that will support these circumstances is the move-out. ARM stated that including the identity of the former customer at that premise could impair the credit of an innocent customer.

ARM also commented that it is unclear why the REP should be put at financial risk for the additional usage of the customer pending completion of a transfer of the customer to the affiliated REP. ARM stated that the process is necessarily more time-consuming than a move-out and that under current commission rules, if the REP does not have a relationship with the person occupying the premise, it cannot bill that customer for services provided. ARM commented that the REP is put in a situation where it is obligated to serve a customer for a period of time when the customer has no parallel obligation to the REP. ARM stated that the commission should allow the REP to bill the person occupying the premise for all services rendered by the REP.

RRI stated that, as the rule is drafted, the affiliated REP or POLR will be unreasonably required to provide service to a customer that has not selected a REP. RRI stated that circumstances addressed by the rule occur because of the moratorium on de- energizing a residential service premise and an existing customer leaving a premise without requesting a move out. RRI stated that, under the proposed rule, the affiliated REP and POLR are tasked with providing service in circumstances where the occupant has not requested service and the occupant has provided no contact information for the purposes of establishing a customer/ REP relationship. RRI recommended that when a REP finds that the customer at the premise it is serving does not have a contract with the REP and the REP is not able to establish service with the customer, then a non-affiliated REP should be permitted to process a move-out and the affiliated REP should be permitted to process a disconnect. RRI suggested that if the customer does not initiate service with the REP of record within ten calendar days from the date the move-out or disconnection notice was issued, then the move-out or disconnection transaction should be processed and the customer should also be permitted to choose another REP for service. RRI suggested that the transaction for choosing another REP should be a switch or a move-in transaction. RRI stated that under its proposal the customer would be made responsible for selecting a REP to establish service, and the affiliated REP and POLR would not be tasked to provide service to the customer. RRI stated that before retail choice, if an existing customer moved out and the new customer did not request service, the premise would be de-energized because either a move-out would have been initiated or the service would be disconnected as the utility would not receive payment for service rendered. RRI stated that the new rule should be consistent with these practices.

In reply comments, TXU/Oncor questioned whether this proposal would benefit the process, because as long as the moratorium on disconnecting a premise on a move-out is in effect, the electric service will remain on. In addition, TXU/Oncor argued, RRI's recommendation to wait ten days to process the

move-out would allow electric service charges to continue to be incurred during that time period by a REP with whom the customer has no relationship and would create another manual process. TXU/Oncor suggested that this section be amended so that current occupants of a premise with no contract with the REP of record and customers whose contract has expired are transferred to the POLR instead of to the affiliated REP.

The commission declines to amend this section to allow REPs to submit a move-out for a current occupant who is not the customer with whom the REP of record has a contract. Under the rule, if the current occupant of a residential or small commercial premise is receiving service, but the REP providing the service does not have a contract with the current occupant, then the REP may transfer that account to the affiliated REP (and an affiliated REP may disconnect). This is consistent with the structure set up for non-paying customers. Sending a current occupant of a premise with no contract with the REP providing service to the POLR instead of the affiliated REP puts the current occupant in a less favorable situation than a non-paying customer, even though it may have been the previous occupant that failed to notify the REP of record to request a move-out. If the current occupant is not paying the REP's bills that are addressed to the previous customer, then the account should be transferred to the affiliated REP, consistent with the rules for non-paying customers.

The commission finds that allowing competitive REPs to issue a move-out would result in that premise becoming an account with no REP of record resulting in additional unaccounted-for-energy, which all REPs must pay. In accordance with new §25.489, the TDU would then issue a disconnect notice to that customer. Allowing REPs to issue a move-out in these situations would essentially give competitive REPs the right to disconnect, which is inconsistent with the rules established in §25.43, relating to the Provider of Last Resort, §25.482, relating to Termination of a Contract, and §25.483, relating to Disconnection of Service.

The commission disagrees with TXU that customers whose service agreement has expired should be transferred to the POLR because §25.43(n)(2) limits such a transfer to large non-residential customers only. Because §25.43 already addresses these customers, the commission finds that it is not appropriate to include customers with an expired contract under the provisions of §25.488(b). This subsection has been amended accordingly. The commission may address the issue of treatment of customers upon contract expiration when reviewing existing customer protection rules.

As previously stated in the commission's response to comments on proposed new §25.486(d), the commission agrees that a REP should be allowed to submit a move-out after a specified period of time after a customer has been disconnected for non-payment. The commission will address this issue at a later date in its review of §25.483, relating to Disconnection of Service (Project Number 27084).

TXU/Oncor recommended that subsection (b) be revised to provide clarification as to whom certain actions are to be addressed. TXU/Oncor stated that subsection (b) refers in several instances to a "customer" when the person is actually not a "customer" of any REP. TXU/Oncor recommended that "customer" be changed to "current occupant" in several appropriate circumstances.

The commission agrees and makes TXU/Oncor's suggested clarifying changes.

TXU/Oncor also suggested that the execution date of a termination or disconnection be changed from "ten business days" to "ten days" to be consistent with §25.482(h)(3) and §25.483(l)(3) and suggested that termination and disconnection be optional instead of mandatory so that the proposed rule is consistent with §25.482(b) and §25.483(c).

In reply comments, ARM agreed with TXU/Oncor that subsection (b) should be revised such that the execution date of a termination or disconnection notice is ten days rather than ten business days.

The commission agrees that the notice provisions in this rule should be consistent with those in §25.482 and §25.483, which require ten days notice, not ten business days notice. The commission is currently reviewing §25.482 and §25.483 and will consider at that time whether all notices for termination or disconnection of service should provide ten calendar days or ten business days notice. If necessary, the commission will make changes to the notice provision in this rule at that time. Accordingly, this section has been amended to require "ten days notice."

TXU/Oncor also suggested using the word "agreement" instead of contract because residential and small commercial occupants do not a have a "contract" with their affiliated REP for service.

The commission agrees that using the term "contract" is not the most appropriate term for the reasons cited by TXU/Oncor. The commission amends this section to replace the word "contract" with "service agreement" to clarify.

RRI stated that a new subsection (e) should be added that would ensure that the affiliated REP would reconnect service if the customer takes action after the disconnect to establish service. In reply comments, ARM objected to RRI's proposed new subsection (e) that provides only the affiliated REP the ability to reestablish service with a customer. ARM stated that a customer should have the ability to designate any REP as its provider and have its service reestablished. ARM suggested that the commission not adopt new subsection (e).

The commission declines to add a new subsection (e) as suggested by RRI. The current occupant does not have a service agreement with the affiliated REP in this situation. If the affiliated REP chooses to issue a disconnection notice, as provided for in subsection (b)(2), and disconnects the account, the current occupant may then choose any REP, including the affiliated REP. The gaining REP must then enroll the customer, with proper authorization and verification, in accordance with §25.474. If RRI's suggestion were adopted, then the current occupant could be reconnected with the affiliated REP and there would be no record of that customer's authorization to enroll with the affiliated REP.

ERCOT suggested several clarifying changes such as using the term "electric service" instead of "service" and using "notice of termination" instead of "notice." ERCOT also suggested substituting "ERCOT protocols" for "independent organization" and suggested the deletion of the requirement that the affiliated REP submit a switch request within three business days after receiving the transfer request, in order for it to be effective on the next meter read. ERCOT suggested instead that subsection (c) state: "The non- affiliated REP shall submit the appropriate electronic drop to affiliated REP request to be effective on the next meter read date." It also suggested that the word "premise" be used instead of "location" in subsection (e), pertaining to large non-residential customers.

In response to ERCOT's comments, the commission amends this subsection to clarify that a REP should submit a termination notice or disconnection notice, as appropriate.

The commission does not agree that the rule should refer to "ERCOT protocols," rather than "independent organization." The commission has designated ERCOT to be the independent organization required by PURA §39.151, therefore the appropriate term to include in the rule is "independent organization," which would include any entity that should be designated as such by the commission.

The commission also does not agree with the proposed language for timing of a switch submittal. The existing language is intended to present REPs with a deadline for submitting the switch and the proposed language would not include that deadline.

The commission does agree that "premise" be substituted for "location" and has made the appropriate changes.

§25.489. Treatment of Premises with No Retail Electric Provider of Record.

OPUC, ARM, AEP, RRI, and TXU/Oncor generally supported this section because, they said, it sets out a standardized process for addressing situations where there is no REP of record. TXU/Oncor, CenterPoint, and RRI each cited the moratorium on move-out disconnections as a primary cause for accounts with no REP of record.

These parties generally agreed that once the disconnection moratorium is lifted, there will be only a small number of occurrences in which a customer is receiving service with no REP of record. In its reply comments, ARM noted that elimination of the disconnect moratorium should reduce the number of no REP of record accounts, but was not convinced that the problem will simply disappear once the disconnect moratorium is lifted. In addition, under the proposed rules, the conditions warranting lifting the moratorium will be solely a function of TDU performance. ARM believes that a process to deal with no REP of record accounts should be put in place in the event that a TDU fails to meet the conditions precedent to lifting the moratorium.

OPUC was particularly supportive of the door hanger process for premises with no REP of record because, they argued, it is a reasonable method to notify electric customers of their responsibilities to select a REP, and the door hanger itself provides the necessary information for customers to comply with the electric service rules. RRI supported the commission's decision to conduct a workshop regarding proposed new §25.489 so that parties may address specific concerns and outline a plan of action to make the rule amenable to all parties involved.

CenterPoint did not support the adoption of this section of the proposed rules. CenterPoint asserted that the new procedures would supplant the process that staff and the market informally adopted in April 2002, with no clear benefit to the end-use customer. CenterPoint argued that once the disconnection moratorium is lifted, the few "no REP of record" accounts that remain could be transferred to a REP using the procedures currently in effect within the market. CenterPoint asserted that the TDUs do not currently have approved tariffs to offset the costs associated with compliance with the proposed rule. In addition, according to CenterPoint, the query for pending transactions in the TDU's and ERCOT's systems, which typically takes five or six hours for the Company's system to perform, must be performed three separate times during the proposed process: once prior to the circulation of the No REP of Record List to the retailers, again after the three-day response period for the REP has expired, and immediately prior to the issuance of the notice of disconnection, and a third time once the ten-day notice period has expired and the disconnection of service has been scheduled. Finally, CenterPoint argued that it no longer has the mass billing system necessary to create either bills or door hangers. In its reply comments, CenterPoint reasserted its position that it does not support the adoption of this section of the proposed rules and urged the commission to withdraw the proposed rule and to move forward with lifting the moratorium.

In its reply comments ARM stated that a process to deal with "no REP of record" accounts should be put in place in the event that a TDU fails to meet the conditions precedent to lifting the moratorium. ARM disagreed with CenterPoint that a process for scrubbing customer lists to identify "no REP of record" accounts is not needed and supported the approach to managing these accounts discussed at the April 24, 2003 workshop.

The commission finds that the proposed rule, requiring a TDU to identify accounts with no REP of record, and then provide notice of disconnection unless the customer selects a REP, is the best way to deal with such accounts. The commission agrees that the problem of these "orphan accounts" is largely due to the moratorium on disconnecting a premise when a move-out is requested. The current, unofficial procedure whereby the TDU simply assigns orphan accounts to the affiliated REP has many problems. First, competitive REPs are never notified of any orphan accounts and are not given the opportunity to claim any accounts that may be theirs. As a result, it is possible that a competitive REP's customers are given to the affiliated REP simply because a move-in transaction was lost in system. In addition, this procedure puts a burden on affiliated REPs who are responsible for wires charges beginning on the day the TDU assigns the orphan account to the affiliated REP. The affiliated REP must then send a notice to the premise, without a customer name, and may only disconnect service to the premise ten days after notice is sent out. This burdens the affiliated REP with approximately two weeks worth of energy costs and wires charges for which they cannot submit a bill to the customer.

With the adoption of §25.490, the commission anticipates that each of the TDUs will meet the required performance standards to end the moratorium on disconnections on a move out, significantly reducing the number of orphan accounts. However, the commission agrees with ARM that ending the moratorium will not eliminate all orphan accounts. For this reason, TDUs should have a standard practice for handling such accounts. Therefore, the commission declines to adopt the changes suggested by CenterPoint and retains the requirement that the TDU compile a list of orphan accounts, scrub that list with ERCOT and all REPs, and provide the occupant of the premise with a disconnection notice.

§25.489(b), Definition

ARM recommends that the definition of the term "no REP of record" be clarified as follows: "For this section, the term "no REP of record" means a premise that is receiving electricity equal to or greater than 150 kWh in a single meter reading cycle, but for which no REP is designated as serving the premise in the TDU's system."

The commission agrees and makes the clarifying change.

§25.489(c), Obligation of TDUs to identify premises with no REP of record

TXU/Oncor supported the process outlined in subsection (c), because it will significantly decrease the amount of energy consumed at premises that are not the subject of an agreement with a REP for the provision of electric service.

ARM suggested that subsection (c) should be modified to better define the specific steps to be undertaken by REPs and TDUs with respect to development and refinement of the list. ARM pointed out that while the rule specifies that the TDU shall compile the list monthly, it does not specify how frequently that list will be provided to REPs, nor does it address the need for REPs to receive these lists on staggered dates throughout the month to avoid being inundated with lists from multiple TDUs all at one time. ARM believes that the details concerning development and processing of this list could be readily developed using the more detailed ESI-ID reconciliation process currently being implemented by the AEP wires company as a template.

The commission agrees with ARM and makes amendments to subsections (c) and (d) to clarify that TDU's shall send the list to REPs on a monthly basis. The commission understands ARM's concerns about REPs being inundated with "No REP of Record" Lists. The commission will work with REPs and TDUs following the adoption of this rule regarding a monthly schedule for the TDUs to send the list to REPs. Because the lists will be shorter each month due to the process adopted in new §25.489 and §25.490, the commission finds that staggered lists may eventually become unnecessary.

AEP proposed that in subsection (c)(1), the text "on a monthly basis" be deleted because the frequency of the preparation of the No REP of Record List should be at the discretion of the TDU. ARM argued that it is important for the market that the No REP of Record List be maintained on an ongoing basis and there should be minimum timeframes imposed on the TDUs for repetition of the scrubbing process.

TXU/Oncor disagreed with AEP on this issue and recommended that the lists be provided on a weekly basis in order to allow them to be routinely created, reviewed, and maintained (rather than requiring a "fire drill" once a month to produce and review the lists), and to expedite the disconnection of those residences, thus cutting the losses that are being incurred as a result of serving them. ARM supported TXU/Oncor's proposal and specifically requested that a standardized format for the list be required of all TDUs for a weekly list. If non-standard formats are used, the burden of scrubbing up to five lists on a weekly basis would be too difficult for individual REPs to manage.

The commission disagrees with AEP that the frequency of the No REP of Record List should be at the discretion of the TDUs. The market needs standardization and the commission seeks to establish minimum timeframes for creating the list. However, the commission declines to design a standard format in which the list should be sent to REPs.

The commission disagrees with TXU/Oncor's proposal to require TDUs to prepare a No REP of Record List each week. The commission understands that this process may be resource intensive initially, mostly due to the moratorium on disconnection. Requiring TDUs to create this list every week, instead of every month, would only worsen the impact on TDUs. Further, Oncor, CenterPoint, and TNMP indicated in the workshop, held on April 24, 2003, that creating the list will be a manual process. For this reason, the commission finds that it is appropriate to retain the current language that requires TDUs to prepare the list on a monthly basis.

CenterPoint proposed that the 150 kWh presumed vacancy threshold should not be a ceiling. For premises above the stated threshold, CenterPoint argued that TDUs should be allowed to make a business decision as to whether it is economical to initiate the proposed process on an account-by-account basis. The unaccounted-for-energy and unbilled delivery service charges provide the TDUs with sufficient incentive to reduce losses associated with these premises.

The commission disagrees with CenterPoint and declines to revise this section to allow a TDU to not comply with the notification process for premises with usage over 150 kWh. To do so would only increase unaccounted-for-energy and circumvent the intent of the rule. TDUs would have the discretion of lowering the 150 kWh threshold, as that would further reduce the number of accounts with no REP of record and reduce unaccounted-for-energy.

§25.489(d), Submission of No REP of Record Lists to REPs.

TXU/Oncor argued that it would be more appropriate to provide REPs with a full business week (five business days) to "scrub" the lists to verify if they have a contractual relationship concerning any of the ESI IDs included on the lists. Furthermore, because the TDUs' obligation to issue disconnection notices to premises on the list is triggered by the expiration of a REP's time period to scrub the list and a TDU will not necessarily know when a REP "receives" the list from the TDU, TXU/Oncor recommended that the five-day time period begin when the *TDU sends* the list, rather than when the *REP receives* it.

The commission agrees with TXU/Oncor's suggestions and makes the changes accordingly.

RRI recommended deletion of the proposed language in §25.489(d) related to door hangers because it is repetitive of §25.489(f).

The commission agrees and makes the suggested change. Proposed subsection (f) already specifies that the accounts on the final list shall receive the disconnect notification.

Proposed §25.489(e), Prohibition on use of No REP of Record List

TXU/Oncor recommended deletion of subsection (e), which prohibits the use of the No REP of Record List as a marketing tool, because the persons on that list are exactly the persons that need to be provided with the information necessary to enable them to choose a REP. Moreover, they argued, other customer protection rules related to marketing (e.g., §25.474) should sufficiently protect these persons from improper marketing.

ARM and RRI both supported revising this section to allow for a minimum "dead period" of three days in which no REP will market to customers on the list. This period should provide a REP who determines that it has an existing relationship with a customer on the list to contact the customer and inform the customer of the steps that will be taken to establish official service to the premise. After the expiration of the "dead period," all REPs should be free to market to customers on the list. TXU/Oncor did not support the three-day delay period concerning use of the No REP of Record List as a marketing tool, because it is impractical and would not accomplish the stated goal. TXU/Oncor stated that unless the No REP of Record List was re-published by a TDU without the inclusion of customers that have been claimed by a REP (which would necessitate identification by the REP of the customers and communication of that information to the TDU), then the list after three days is no different than it was on the day

it was published. Therefore, they argued, the three-day dead period would not benefit the process, yet it would add another regulatory restriction that would have to be observed by REPs and potentially monitored by the commission.

OPUC disagreed with ARM and RRI and stated that REPs should not use the TDUs "No REP of Record List" as a marketing tool, even after a three day period has elapsed.

The commission agrees that there is a benefit to allowing REPs to market to occupants of a premise listed on the No REP of Record List. However, the commission agrees that implementing a three-day delay period before REPs are allowed to market would not benefit the process. The purpose of this rule is to facilitate selection of a REP and establishing an account by a current occupant who is receiving electric service, but has no REP of record. Allowing REPs to use the list of occupants to extend offers for service is consistent with this goal. The commission notes, however, that any REP that claims a premise in accordance with subsection (d) and any REP that enrolls an orphan account shall comply with all authorization and verification requirements under §25.474 of this title (relating to Selection or Change of Retail Electric Provider). The commission deletes subsection (e), and amends subsection (d) to include the language regarding a REP's responsibility to comply with §25.474.

Proposed §25.489(f), Customer notification

RRI supported the provision to require that the door hanger be provided in standardized bilingual format.

CenterPoint, TXU/Oncor, and AEP recommended that the proposed notification method be expanded to allow TDUs the option of either providing notice through a written mailing or a door hanger. Because a door hanger methodology likely would be much more costly than a mailing methodology, without providing significant additional benefits (if any), these commenters argued that the door hanger method of providing notification would be extremely resource intensive.

The commission agrees with commenters that it is reasonable to allow TDUs the flexibility to either mail the notice or to provide it as a door hanger. However the commission is concerned that notices mailed to an address may be returned to sender. To reduce this possibility, the commission finds that it is appropriate to require that TDUs sending a disconnect notice by mail in this situation should address the notice to "current occupant." TDUs that choose to send notice by mail should provide an advance copy of the notice to commission staff.

Proposed §25.489(g), Wires charges billed to customer with no REP of record

The AEP Companies proposed that in proposed subsection (g), the term regarding the billing of wires charges "from the date of the last move-out transaction that completed the transaction lifecycle, or for the previous six months, whichever is less," should be eliminated. AEP stated its position on the six months issue in response to Preamble Question Number 3.

As discussed in response to comments to Preamble Question Number 3, the commission has amended this subsection to prohibit TDU's from backbilling an occupant at a premise with no REP of record for wires charges.

Proposed §25.489(h), Door hanger format (now Format of notice)

ARM suggested that the TDU should provide the ESI ID for the premise with no REP of record on the door hanger in an effort to facilitate the enrollment process when a customer contacts a REP. The addition of the ESI ID on the door hanger will be particularly helpful in cases where a customer's premise has multiple ESI IDs.

The commission agrees that including the ESI ID on the door hanger or mailed notice would facilitate the customer's enrollment with a REP. The commission amends this subsection accordingly.

ARM also pointed out that there will actually be two door hangers - one for residential customers and one for commercial customers. ARM recommended that subsection (h)(2) be revised to indicate that the door hanger for commercial customers will include a "comprehensive list of REPs serving commercial customers in the TDU's territory...."

CenterPoint and TXU/Oncor disagreed with ARM on this point, and recommend that the rule not require that the notices list all of the REPs serving customers in the TDU's service area because that list is subject to change frequently and therefore could cause significant waste of printed material. Rather, both CenterPoint and TXU/Oncor suggested including the commission's customer service hotline phone number and the commission's website address that lists all certified REPs so that customers can access the most up-to-date information concerning potential REPs.

The commission finds that it is important that the notice provided to an occupant at a premise with no REP of record is informative and facilitates that customer's enrollment with a REP. Including a list of REPs from which that customer may choose is the most important information on the notice. However, the commission amends this subsection to clarify that the list of REPs is provided in the notice, but delete that the list must be "listed below." In addition, the commission agrees that this section should be amended to recognize that a separate notice will be needed for commercial premises and makes the clarifying changes accordingly.

CenterPoint proposed that language be added to the notice to reflect that disconnection will occur no earlier than "ten calendar days" after the date the notice is issued. In the instance of notification by mail, three days should be added to the stated minimum "ten calendar day" notice period.

As already discussed in the commission's response to comments on §25.488, the commission is currently reviewing §25.482 and §25.483 and will consider at that time whether all notices for termination or disconnection of service should provide ten calendar days or ten business days notice. If necessary, the commission will make changes to the notice provision in this rule at that time. Accordingly, this section has been amended to require "ten days notice."

Proposed §25.489(i), REP obligation to submit move-in transaction

As discussed in conjunction with proposed §25.486, ARM argued that the three- day rescission period must be eliminated for all move-in transactions in order to ensure that the REP will be able to bill for services rendered. This is particularly true if the commission mandates that a move-in transaction be used.

The commission agrees that a REP should not be obligated to provide the three day rescission period when submitting a move-in transaction. However, the commission finds that it is unnecessary to amend this subsection, because it is more appropriate to amend §25.474(h), relating to a customer's right of cancellation. As part of Project Number 27084, the

commission is currently reviewing that rule and will propose amendments later this year.

TXU/Oncor recommended that proposed §25.489 be amended to add a subsection that addresses instances where customers are disconnected due to an error in the "no REP of record" process. Regardless of whether the error is due to an action of the REP, the TDU, ERCOT, or the customer, there should be an expedited process to reconnect such customers. TXU/Oncor provided language for a new subsection (i) that would require TDUs to have such a process, and allows the TDUs to charge appropriate fees to REPs for such expedited requests unless the TDU is at fault in causing the disconnection. In response to TXU/Oncor's suggestion concerning expedited reconnections for customers disconnected in error, CenterPoint noted that the TDUs should only provide expedited reconnection service as set forth in each TDU's commission-approved tariff.

The commission strongly encourages TDUs and REPs to work together to ensure that customers are not erroneously disconnected and if that should happen, the customer should be reconnected on an expedited basis. Accordingly, the commission has included TXU/Oncor's suggestion in the rule (as a new subsection (j)), but clarified that the reconnection should be done in accordance with commission rules in addition to the TDU tariff.

Proposed §25.489(j), Disconnection of premise with no REP of record

CenterPoint suggested that the rule language be changed to reflect that upon expiration of the "ten calendar day" notice period, the TDUs should be permitted to complete the disconnections according to existing crew and resource availabilities and schedules.

The commission declines to make this change in this rule. As part of Project Number 27084, the commission is currently reviewing the disconnection rule and will propose amendments later this year.

§25.490. Moratorium on Disconnection on Move-Out.

RRI strongly supported proposed §25.490, indicating that the rule would significantly reduce the number of premises with no REP of record. CenterPoint argued, however, that there is no reason to preserve the disconnection moratorium because the market has gained experience and made significant improvements in handling move-in transactions and there is a safety net process to ensure the successful initiation of service. CenterPoint also noted that the commission already has the tools to monitor and ensure timely processing of move-in transactions through the performance measures adopted in Project Number 24462, *PUC Proceeding to Establish Performance Measures Relating to the Competitive Retail Electric Market.* Further, CenterPoint emphasized that the moratorium is the primary driver of the "orphaned" account issues and cost-recovery concerns discussed in response to the preamble questions. According to CenterPoint, the moratorium creates more problems than it solves and no longer serves a useful purpose.

ARM agreed with CenterPoint that steps to lift the disconnection moratorium should be taken as expeditiously as possible because the moratorium has caused problems in the market. However, ARM argued that the proposed rule is warranted and supported the notion that TDUs should have to meet a specific performance level in order to lift the moratorium.

The commission disagrees with CenterPoint that the moratorium should be eliminated at this time. While the commission recognizes that the moratorium has caused problems, it is necessary and essential for customers to keep the moratorium in place until the market can maintain satisfactory performance in processing move-in transactions and reconnections. The rule provides an appropriate goal for TDUs to lift the moratorium by achieving and maintaining the performance standards related to these transactions.

§25.490(a), Applicability

TXU/Oncor recommended modifying subsection (a) to clarify that the rule applies only to residential premises because the move-out disconnection moratorium applies only to residential customers.

The commission agrees with TXU/Oncor and clarifies the rule accordingly.

§25.490(c), Filing requirement (now Reporting requirement)

CenterPoint recommended removing from the success rate move-in requests involving atypical situations, including: (1) connections that are attempted but "unexecutable" because of a fence, dangerous animal, etc.; (2) instances when a permit is required before a connection can be performed; and (3) connections that require construction of distribution infrastructure other than a meter (e.g., poles and wires) to establish service. If the rule is adopted, CenterPoint proposed excluding similar situations, as well as situations in which a meter must be installed or the move-in request is dated for a date in the past.

The commission finds that by amending subsection (c) to measure a TDU's success rate from the "scheduled date" instead of the "requested date," CenterPoint's suggestion to take out special circumstances is unnecessary. A REP may submit a request for a move- in for a specific date; however, the TDU may then reject that request date for any of the reasons cited by CenterPoint. The final scheduled date would already take into account special circumstances such as required construction, a necessary permit, a needed meter, or restricted access. The commission does agree with CenterPoint that removing back- dated move-ins from the reporting requirement is appropriate and makes the corresponding change to the rule.

RRI and TXU/Oncor suggested requiring each TDU to report on its current success rate for achieving the 95% benchmark within 15 days, instead of ten days, following the end of the month covered by the report. TXU/Oncor noted that this time was needed to acquire and process all of the information required by the proposed rules. CenterPoint suggested that TDUs submit the monthly report no later than the last day of the month following the reporting month.

The commission agrees with RRI and TXU/Oncor that it is reasonable for TDUs to submit the monthly reports 15 days following the last day of the reporting month, instead of ten days as proposed. The commission disagrees with CenterPoint that the deadline should be extended to the last day of the month following the reporting month. It has not been demonstrated that this additional time is necessary and it may delay resolution of issues that could be identified through the tracking and reporting process.

AEP Companies proposed removing the phrase "on or before" the requested date in subsection (c), noting that the concern for public safety and liability for connecting customers prior to the move-in date makes this wording inappropriate. RRI proposed

adding language in subsections (c) and (d) that specifies that the measurements be based on adherence to ERCOT protocols.

The commission agrees with AEP that the phrase "on or before" is problematic. It is noted that if a REP submits a safety-net move in request, new §25.487 requires the REP to then submit an electronic move-in request. That electronic request would have a backdated scheduled date and would not be included in the TDU reports. The commission disagrees with RRI's proposal to rely on adherence to ERCOT protocols, because the protocols do not provide timelines for completion of move-ins or reconnections. The commission amends this subsection to require the TDU to measure the success of reconnections and move-ins from the scheduled date of the move-in or reconnection.

§25.490(d), Relaxation of moratorium on disconnection

TXU/Oncor agreed that the moratorium should be lifted if the move-in processes are working on a timely basis, but recommended lifting the moratorium no earlier than October 1, 2003. According to TXU/Oncor, this would permit systems to progress and the market to mature through an additional summer period, so that the move-out disconnections will begin when the weather is milder and the active summer moving period has ended. RRI disagreed with TXU/Oncor's proposal, noting that TDUs should be encouraged to reach the 95% standard for processing move-ins as soon as possible so that the moratorium and its related problems can be eliminated.

The commission disagrees with TXU/Oncor that the moratorium should be mandatory until October 1, 2003. While the commission appreciates TXU/Oncor's concern about possible problems with the high-volume of move-in transactions occurring during the summer months, the commission believes that a TDU should be permitted (and encouraged) to discontinue the moratorium at the earliest possible date that it can demonstrate and maintain satisfactory performance in processing these transactions. If a TDU subsequently falls below the standards set forth in the rule, the rule would require that it re-instate the moratorium. The commission believes that this approach will eliminate at the earliest possible date the problems associated with the moratorium that RRI, CenterPoint, and other market participants have identified.

ARM generally supported proposed §25.490, but recommended modifying the TDU's reporting requirements to include monthly reporting of both standard and safety- net move-in requests, and all service reconnection orders by the requested date.

The commission declines to make this change. As noted above, if a REP submits a safety-net move in request, new §25.487 requires the REP to then submit an electronic move-in request. That electronic request would have a backdated scheduled date and would not be included in the TDU reports.

While TXU/Oncor supported lifting the moratorium based on a TDU's success rate of processing move-in requests, the company questioned conditioning the end of the moratorium on the success rate of reconnections. TXU/Oncor pointed out that TDUs are not currently required to track reconnection success rates and, in fact, there is no common transaction used to initiate reconnections that would allow such tracking to occur. Moreover, TXU/Oncor stated that the term "reconnection" is ambiguous and could refer to all reconnections, including those executed for a move-in request, service issues, etc. In addition, AEP Companies argued that combining service connection and reconnection for non-payment under the rule is inappropriate because these transactions are completely different processes. AEP Companies pointed out that reconnection after disconnection for non-payment has no influence on the disconnection after a move-out. TXU/Oncor agreed with AEP Companies and emphasized that reconnections related to issues other than move-out disconnections should not be a criteria for lifting the moratorium.

The commission disagrees with AEP Companies and TXU/Oncor that TDUs should not be required to report their performance with regard to reconnection requests. The commission is currently reviewing §25.483, relating to Disconnection of Service, to require specific timelines for reconnection of service when a customer has been disconnected for nonpayment. The commission finds that it is important to measure the success rate of a TDU in energizing a premise on time. It is equally important to measure whether a TDU is meeting requests to reconnect service as it is to measure the success in initially connecting service.

AEP indicated that the measurement in subsection (d) for relaxing the disconnection moratorium is based on the date the customer requests commencement of service and can create the illusion that the TDU is not conforming to the rules. AEP Companies explained that a customer may request a same-day or next-day service connection in a situation in which construction, permits, etc. are required to complete the move-in, making the customer's request impossible to meet. Moreover, AEP Companies noted that Section 15.1.4.1 (Request to Begin Electric Service) of the ERCOT Protocols states that same-day move-ins will be supported by ERCOT if received by 9:00 a.m., and forwarded to the TDU within six hours of receipt by ERCOT. Same-day move-ins received after 9:00 a.m. will be processed the next business day. In addition, AEP Companies suggested that any backdated move-in request must be excluded from the performance measurements. AEP proposed modifying subsection (d) to measure move-in requests for reconnection on the requested date, and if the date of service is at least two days after the TDU receives ERCOT's order. For a period that is less than this time allotment, AEP Companies suggested that the TDU be considered in compliance when the order is completed by the close of the next business day after the TDU receives the order. TXU/Oncor proposed measuring the success rate according to the date the TDU schedules execution of a move-in request, not the move-in date requested by the REP.

For the same reasons stated above, the commission amends this section so that the TDU success rate is measured based on meeting the scheduled date of reconnections and move-ins, instead of the requested date.

TXU/Oncor recommended adding a new subsection (f) that requires a TDU to send notices to REPs in its service areas prior to changing the status of executing disconnections upon the receipt of a move-out request.

The commission agrees that the notice proposed by TXU/Oncor would be useful for REPs and would not be a significant burden on TDUs. Therefore, the commission amends the rule by adding new subsection (f) to that effect.

ARM suggested adding a new subsection to the rule to address the permanent lifting of the moratorium when the TDU has demonstrated a 95% success rate for 12 consecutive months. CenterPoint replied that the 12-month time frame suggested by ARM is unnecessarily costly and excessive, because there is already a safety-net measure to support the overarching goal of customers receiving timely provision of service. CenterPoint

supported the three-month provision for demonstrating successful performance.

OPUC objected to the proposal in the rule to relax the disconnection moratorium on move-outs. OPUC suggested that the rule require the TDU to show on a continuing basis that 95% of move-in requests have been processed on the requested date. Specifically, OPUC recommended that the rule require TDUs that have met the 95% success rate for 12 consecutive months, to keep continuous records past the initial 12-month period, and to report to the commission and OPUC upon request.

The commission agrees with OPUC that TDU's should be required to meet the performance standards in the rule on an ongoing basis. The commission finds that requiring TDUs to file monthly performance reports with the commission for 12 months is an appropriate length of time. In addition, the commission finds that OPUC's recommendation that TDUs provide a report to the commission only upon request after the initial 12 months is beneficial to the market, but fair to TDUs because the monthly reporting requirement would still expire after 12 months.

The commission does not agree that the rule should require TDUs to file the reports with OPUC upon request. OPUC may access these reports in the same manner as all other reports filed with the commission. If the commission requests that a TDU file a report after the 12-month reporting period has expired, OPUC may obtain a copy at that time as well.

These new sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 1998, Supplement 2003) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and PURA §39.101, which grants the commission authority to establish various, specific protections for retail customers; PURA §39.102, which provides for retail customer choice; and PURA chapter 17, subchapters A, C and D, which deal, respectively, with general provisions relating to customer protection policy, the retail customer's right to choice, and protection of the retail customer against unauthorized charges.

Cross Reference to Statutes: PURA §§14.002, 39.101, 39.102, and PURA chapter 17, subchapters A, C, and D.

§25.487. Obligations Related to Move-In Transactions.

(a) Applicability. This section applies to all retail electric providers (REPs).

(b) Definition. For this section, the term "safety-net process" means a process developed and implemented by the market participants in the Texas retail electric market in 2002 to ensure that a customer who moves into a premise receives electric service in a timely manner. The safety-net process should be used for legitimate purposes and not to bypass standard rules and processes.

(c) Standard move-in request. A REP shall submit a move-in transaction to the registration agent electronically, in accordance with applicable protocols and guidelines of the independent organization to establish service for a new customer.

(d) Safety-net move-in request. In the event a REP does not receive a confirmation that the transmission and distribution utility (TDU) has received the appropriate move- in request transaction from the Electric Reliability Council of Texas (ERCOT), and does not receive a valid move-in rejection, the REP shall submit the move-in request using the safety-net process by noon on the business day prior to the customer's move-in date.

(1) In submitting a move-in request using the safety-net process, the REP establishes its right to serve the customer at the premise identified by the electric service identifier (ESI ID) from the date the TDU executes the move-in by connecting service to the premise. The date the TDU executes the move-in by connecting service to the premise is the effective date for all wires charges and fees associated with that ESI ID. This date will also be the effective date for the move-in when the applicable move-in electronic transactions are processed. The TDU may bill monthly wires charges and fees to the REP commencing with the effective date, but may not issue wires charges and fees or consumption records until the REP submits the electronic transaction.

(2) The REP shall ensure that the standard electronic move-in transaction is submitted to ERCOT in accordance with applicable protocols on or before the fifth business day after submitting the move-in through the safety net process, even if the physical move-in has already taken place as a result of being submitted through the safety net process. The REP, ERCOT, and the TDU shall work to ensure that the appropriate premise information and enrollment response transaction is sent to and received by the new REP and that the appropriate drop (due to switch request) transaction is sent to the losing REP of record as shown in ERCOT's systems.

(e) Sunset provision for review of safety-net process. By March 1, 2004, the commission shall, after input provided by market participants, review the safety- net process and determine whether it should be continued.

§25.488. Procedures for a Premise with No Service Agreement.

(a) Applicability. This section applies to all retail electric providers (REPs).

(b) Service to premise with no service agreement. If a REP finds that a current occupant at a premise for which the provider is shown as the REP of record in the ERCOT or TDU system is not the customer with whom the REP currently has a service agreement for retail electric service:

(1) the REP may establish service with the occupant. The REP shall obtain verification of the occupant's authorization to establish service with the REP consistent with the requirements of §25.474 of this title (relating to Selection or Change of Retail Electric Provider); or

(2) the non-affiliated REP may issue a termination notice and the affiliated REP may issue a disconnection notice to the current occupant. The notice shall contain the following:

(A) The date the termination (or disconnection) will occur, provided that the date shall not be sooner than ten days from the date the notice is issued;

(B) For notices issued by a non-affiliated REP to a residential or small non-residential customer, as those terms are defined in §25.43 of this title (relating to Provider of Last Resort (POLR)), that the customer's service shall be transferred to the affiliated REP if the customer does not respond within ten days after issuance of the notice;

(C) For notices issued by the affiliated REP to residential and small non- residential customers, as those terms are defined in §25.43 of this title, that the customer's service shall be disconnected if the customer does not respond within ten days after the issuance of the notice;

(D) For notices issued to large non-residential customers, as that term is defined in §25.43 of this title, that the customer's service shall be transferred to the provider of last resort if the customer does not respond within ten days after the issuance of the notice;

(E) What actions the customer must take if that customer believes the notice is in error or desires to establish service with the REP; and

(F) A statement that informs the customer of the right to obtain service from another licensed REP and that information about other REPs can be obtained from the commission.

(c) Termination of service to residential and small non-residential customer by non- affiliated REPs. If a non-affiliated REP terminates service to an occupant in accordance with this section, the REP shall transfer that occupant to the affiliated REP using the procedures established by the independent organization in order to effectuate the termination of contract provision in §25.482(b) of this title (relating to Termination of Contract).

(d) Disconnection of residential and small non-residential customer by affiliated REP. If an affiliated REP disconnects service with the occupant, it shall comply with the requirements of §25.483 of this title (relating to Disconnection of Service).

(e) Termination of service to a large non-residential customer. If a REP terminates electric service to a large non-residential occupant in accordance with this section, the REP shall transfer that occupant to the provider of last resort.

(f) Prohibition on using move-out transactions. A REP may not submit a move-out transaction, as defined by ERCOT protocols, to effectuate the transfers under this section.

§25.489. Treatment of Premises with No Retail Electric Provider of Record.

(a) Applicability. This section applies to all transmission and distribution utilities (TDUs) and retail electric providers (REPs) in areas open to retail customer choice.

(b) Definition. For this section, the term "no REP of record" means a premise that is receiving electricity equal to or greater than 150 kilowatt-hours (kWh) in a single meter reading cycle, but for which no REP is designated as serving the premise in the TDU's system.

(c) Obligation of TDUs to identify premises with no REP of record. Each TDU shall implement the following procedures to identify those premises that have no REP of record:

(1) Each TDU shall prepare a No REP of Record List on a monthly basis, identifying all premises with consumption equal to or greater than 150 kilowatt hours (kWh) in a single meter reading cycle, but no REP of record in the TDU's Customer Information System;

(2) Each TDU shall delete a premise from the list if there is evidence of erroneous meter reads for the premise;

(3) Each TDU shall cross reference the list with ERCOT's pending orders to identify any move-in transactions that indicate that a REP is initiating service at a premise on the list and remove such premises from the list;

(4) Each TDU shall review safety-net move-in requests to initiate service and remove such premises from the list; and

(5) Each TDU shall review its internal systems for pending transactions and any correspondence from REPs claiming that a premise should be assigned to the REP. Any corresponding matches of premises shall be removed from the list.

(d) Submission of No REP of Record List to REPs.

(1) Each TDU shall send the No REP of Record List to all REPs offering service in its service area each month;

(2) Within five business days after the TDU sends the list, a REP shall inform the TDU in writing if it has a contract with a customer for a location on the list. The TDU shall delete all claimed premises from the list.

(3) Nothing in this section is meant to absolve a REP of its responsibilities under §25.474 of this title (relating to Selection or Change of Retail Electric Provider).

(e) Customer notification. TDUs shall provide notice to all remaining premises in a standardized bilingual (English and Spanish) format consistent with subsection (g) of this section. TDUs may either provide notice by placing door hangers at each premise or by mailing notice to each premise.

(f) Wires charges billed to customer with no REP of record. A premise with no REP of record shall not constitute unauthorized use of service under the TDU's tariff for retail delivery service approved pursuant to §25.214 of this title (relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities).

(g) Format of notice. The notice provided by the TDU to a customer on the final list of accounts with no REP of record shall have the identifying code #999 printed in bold letters to enable the REPs to identify customers contacting them as premises on the No REP of Record List and shall comply with the content requirements of this subsection.

(1) The notice shall include the following information and be formatted as follows:
Figure: 16 TAC §25.489(g)(1)

(2) A comprehensive list of REPs serving residential customers in the TDU's territory, including each REP's toll-free number and website address (if available), shall be listed on the notice provided to residential premises. A comprehensive list of REPs serving commercial customers in the TDU's territory, including each company's toll-free number and website address (if available), shall be listed on the notice provided to commercial premises.

(h) REP obligation to submit move-in transaction. A REP that enrolls a premise in response to the TDU notice shall submit a move-in transaction, not a switch transaction, to the registration agent in accordance with the requirements of §25.487 of this title (relating to Obligations Related to Move-In Transactions).

(i) Disconnection of premise with no REP of record. Each TDU may disconnect a premise with no REP of record no earlier than ten days after the customer receives the TDU's notification required by this section. Prior to disconnecting the service for a premise with no REP of record, each TDU shall repeat the procedures listed in subsection (c) of this section (other than issuing notice) to prevent the disconnection of a customer who has initiated service with a REP. A TDU shall not disconnect any premise that has been claimed by a REP in accordance with this section.

(j) Expedited reconnection of premise. If a TDU disconnects a premise in error, the TDU shall reconnect a premise on an expedited basis in accordance with its tariff and commission rules, whichever process is shorter.

§25.490. Moratorium on Disconnection on Move-Out.

(a) Applicability. This section applies to all transmission and distribution utilities (TDUs) with respect to residential customers.

(b) Moratorium on disconnection on move-out. A TDU shall not disconnect a residential premise after receiving a move-out transaction unless the requirements of subsection (d) of this section have been met.

(c) Reporting requirement.

(1) A TDU shall report monthly to the commission its success rate in processing standard electronic move-in requests for residential customers. The success rate shall be measured based on whether the meter read and energizing of the premise is accomplished on the scheduled date. The report shall omit backdated move-in requests.

(2) A TDU shall also report to the commission its success rate in processing requests for reconnection of electric service. The success rate shall be measured based on whether the re-energizing of the premise is accomplished on the scheduled date.

(3) The reports shall be filed with the commission on or before the 15th day of the month following the last day of the reporting month.

(d) Relaxation of moratorium on disconnection. Upon approval from commission staff, a TDU may disconnect residential premises after receiving a move-out transaction, as defined in the ERCOT protocols. To achieve approval, the TDU must demonstrate through reports filed in accordance with subsection (c) of this section that it has for three consecutive months or more processed 95% or greater of all move-ins and requests for reconnection of electric service no later than the scheduled date. If a TDU's success rate falls below 95% for two consecutive months or below 90% in any one month, the TDU shall immediately notify commission staff in writing, and commission approval shall be automatically revoked.

(e) Elimination of reporting requirement. Once a TDU demonstrates a 95% success rate in completing reconnections and move-ins on the scheduled date for 12 consecutive months, it shall no longer be required to submit monthly reports, as required by subsection (c) of this section. However, upon request by the commission, a TDU shall file a report on its current success rate.

(f) Notice of moratorium status. The TDU shall notify each REP in its service territory each time it changes its status, pursuant to subsection (d) of this section, concerning the moratorium on move-out disconnections. The TDU shall not disconnect any residential premise prior to completion of this notice.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 15, 2003.

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Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 66. STATE ADOPTION AND DISTRIBUTION OF INSTRUCTIONAL MATERIALS

SUBCHAPTER B. STATE ADOPTION OF INSTRUCTIONAL MATERIALS

19 TAC §66.28

The State Board of Education (SBOE) adopts an amendment to §66.28, concerning the identification of the essential knowledge and skills that will be used in evaluating textbooks, without changes to the proposed text as published in the May 2, 2003, issue of the *Texas Register* (28 TexReg 3680). The section specifies the essential knowledge and skills used to evaluate instructional materials submitted under proclamations of the SBOE advertising for bids on instructional materials. Texas Education Code (TEC), Chapter 28, requires that the SBOE, by rule, identify the Texas essential knowledge and skills (TEKS) that will be used in evaluating textbooks. The amendment to §66.28 adopts by reference the specifications for the TEKS used to evaluate instructional materials submitted under the call of Proclamation 2002.

Proclamation 2002, approved by the SBOE at the May 2002 meeting, calls for instructional materials in a variety of subjects in fine arts, Grades 1 - 12; languages other than English, Grades 1 - 12; American Sign Language; physical education, Grades 1 - 12; and health education, Grades 1 - 12. The amendment to 19 TAC §66.28 defines, by rule, the TEKS to be used to evaluate textbooks in these subjects as the TEKS contained in Proclamation 2002. The amendment adds language that adopts by reference the content requirements in Proclamation 2002 and deletes language related to Proclamation 2000.

The rule text of §66.28 is adopted without changes; however, the document adopted by reference, Proclamation 2002, is adopted with editorial changes that correct the essential knowledge and skills reflected for fine arts. Following is a list of the corrections.

Section 117.6. Music, Grade 1. Subsection (b)(2)(B) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.7. Theatre, Grade 1. Subsection (a)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.9. Music, Grade 2. Subsection (b)(2)(B) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.10. Theatre, Grade 2. Subsection (a)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.11. Art, Grade 3. Subsection (b)(1)(B) is corrected to add word at the end of the sentence that was inadvertently omitted. Subsection (b)(3) is corrected to reflect the correct subparagraphs (A) - (C).

Section 117.12. Music, Grade 3. Subsection (b)(2)(B) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.13. Theatre, Grade 3. Subsection (a)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted. Subsection (b)(5) is corrected to reflect the correct subparagraphs (A) - (D).

Section 117.14. Art, Grade 4. Subsection (c)(2) is corrected to reflect the correct subparagraphs (A) - (C). Subsection (c) is also corrected to reflect the correct paragraph (3).

Section 117.15. Music, Grade 4. Subsection (c)(2) is corrected to include subparagraph (B) that was inadvertently omitted. Subsection (c)(3) is corrected to include subparagraph (A) that was inadvertently omitted.

Section 117.16. Theatre, Grade 4. Subsection (b)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.18. Music, Grade 5. Subsections (a)(1) and (a)(2) are corrected to reflect the correct introduction related to music.

Section 117.19. Theatre, Grade 5. Subsections (a)(1) and (c)(4)(B) are corrected to add words at the end of sentences that were inadvertently omitted.

Section 117.32. Art, Grade 6. Subsection (c) is corrected to remove incorrect paragraphs (5) and (6).

Section 117.33. Music, Grade 6. Subsection (c)(5) is corrected to add subparagraph (C) that was inadvertently omitted. Subsection (c)(6) is corrected to add subparagraph (B) that was inadvertently omitted.

Section 117.35. Art, Grade 7. Subsection (c)(1)(B) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.37. Theatre, Grade 7. Subsection (b)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted. Subsections (c)(4)(B) and (c)(5)(A) are corrected to add words at the end of sentences that were inadvertently omitted.

Section 117.40. Theatre, Grade 8. Subsections (b)(1), (c)(4)(B), and (c)(5)(A) are corrected to add words at the end of sentences that were inadvertently omitted.

Section 117.52. Art, Level I. Subsection (c)(2)(A) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.55. Art, Level IV. Subsection (c)(2)(C) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.58. Dance, Level III. Subsection (c)(3)(D) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.61. Music, Level II. Subsection (c)(1)(B) is corrected to add a word at the end of the sentence that was inadvertently omitted.

Section 117.65. Theatre, Level II. Subsection (c)(5)(C) is corrected to add words at the end of the sentence that were inadvertently omitted.

Section 117.66. Theatre, Level III. Subsection (c)(3) is corrected to add subparagraph (C) that was inadvertently omitted.

Section 117.67. Theatre, Level IV. Subsection (b)(1) is corrected to add a word at the end of the sentence that was inadvertently omitted.

In addition, the cover of Proclamation 2002 is revised to reflect the date of the corrections.

The amendment is adopted under the Texas Education Code, §28.002, which authorizes the State Board of Education to identify the essential knowledge and skills.

The adopted amendment implements the Texas Education Code, §28.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304378
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Effective date: September 1, 2003
Proposal publication date: May 2, 2003
For further information, please call: (512) 463-9701

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 74. CHIROPRACTIC FACILITIES

22 TAC §74.3

The Texas Board of Chiropractic Examiners adopts an amendment to §74.3(e), relating to annual renewal for a chiropractic facility without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3441). The text of the rule as amended will not be republished.

The amendment deletes the prohibition in subsection (e), placed on chiropractors, on practicing in a chiropractic facility whose license is expired. This amendment is to conform this subsection to the same change in §74.5(a) which has been adopted by the board. Section 75.11(b) has also been amended to conform that rule to §74.5(a), as amended. As a consequence of the changes to these rules, the requirement to obtain and maintain a facility license shall fall on the owner of a facility, the person having the primary responsibility for compliance with the board's facility rules.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152 (Vernon's 2002), which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and Occupations Code §201.312 (Vernon's 2002) which the board interprets as authorizing it to adopt rules providing for a facility licensing and regulatory program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304374

Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: August 10, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 305-6709

22 TAC §74.5

The Texas Board of Chiropractic Examiners adopts an amendment to §74.5(a), relating to rules of conduct without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3441). The text of the rule as amended will not be republished.

The amendment deletes the prohibition on chiropractors from practicing in a chiropractic facility whose license is expired, in subsection (a) of §74.5. The deletion of this prohibition on chiropractors has the consequence of placing the duty to obtain and maintain a facility license on the owner of a facility, the person having the primary responsibility for compliance with the board's facility rules. Revisions are also adopted, in separate rulemakings filed simultaneously to this rulemaking, to §74.3(e) and §75.11(b) to conform those rules to the amendment to §74.5(a).

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152 (Vernon's 2002), which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and Occupations Code §201.312 (Vernon's 2002), which the board interprets as authorizing it to adopt rules providing for a facility licensing and regulatory program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304375
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: August 10, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 305-6709

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.11

The Texas Board of Chiropractic Examiners adopts an amendment to §75.11(b), relating to the maximum sanctions table for violations subject to the enforcement authority of the TBCE, without changes to the proposed text as published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3442). The text of the rule as amended will not be republished.

The amendment deletes the reference in the sanctions table to violations by a chiropractor for practicing in a chiropractic facility whose facility license is expired. *See* Category II violations. This change is to conform the sanctions table reference to the change adopted by the Board in §74.5(a), relating to rules of conduct for facilities. Section 74.3(e), relating to annual renewal of facility licenses, has also been amended to conform that rule to §74.5(a), as amended. As a consequence of the changes to these rules, the requirement to obtain and maintain a facility license shall fall on the owner of a facility, the person having the primary responsibility for compliance with the board's facility rules.

No comments were received concerning the proposed amendment.

The amendment is adopted under the Occupations Code §201.152 (Vernon's 2002), which the board interprets as authorizing it to adopt rules necessary for the performance of its duties, the regulation of the practice of chiropractic, and the enforcement of the Chiropractic Act, and §201.312 (Vernon's 2002), which the board interprets as authorizing it to adopt rules providing for a facility licensing and regulatory program.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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

TRD-200304376
Sandra Smith
Executive Director
Texas Board of Chiropractic Examiners
Effective date: August 10, 2003
Proposal publication date: April 25, 2003
For further information, please call: (512) 305-6709

PART 17. TEXAS STATE BOARD OF PLUMBING EXAMINERS

CHAPTER 361. ADMINISTRATION

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §361.6

The Texas State Board of Plumbing Examiners adopts amendments to §361.6, which specifies certain fees charged by the Board, including the fees for renewal of Plumbing Inspector Licenses, Tradesman Plumber-Limited Licenses, Plumber's Apprentice Registration, Residential Utilities Installer Registration, Drain Cleaner Registration and Drain Cleaner-Restricted Registration. This Section also includes the renewal fees for the two combined license categories of "Plumbing Inspector with a Master Plumber or Journeyman Plumber License" and Master Plumber with a Journeyman Plumber License." The amendments are adopted without changes to the proposed text as published in the May 23, 2003 issue of the *Texas Register* (28 TexReg 4037). No comments were received regarding the proposed amendments.

The amendments to §361.6 are in compliance with Senate Bill 187 (77th Legislature) which established the Texas Online Authority and Senate Bill 645 (77th Legislature) which requires state occupational licensing agencies, including the Texas State Board of Plumbing Examiners, to raise license and endorsement fees to pay for the development and use of "Texas

Online", a state web site for electronic occupational license transactions. The Texas Online Authority has advised the Board that the online renewal of these licenses and registrations will be implemented by September 1, 2003. The Texas Online Authority is requiring the Board to begin collecting the additional fees on September 1, 2003. The annual license and registration renewal fees that were set by the Texas Online Authority are:

Master Plumber License combined with a Journeyman Plumber License renewal fee to increase by $5 (from $175 to $180). Plumbing Inspector License renewal fee to increase by $5 (from $50 to $55). Plumbing Inspector License combined with a Master or Journeyman Plumber License renewal fee to increase by $5 (from $50 to $55). Tradesman Plumber-Limited License renewal fee to increase by $2 (from $25 to $27). Plumber's Apprentice Registration renewal fee to increase by $2 (from $10 to $12). Residential Utilities Installer Registration renewal fee to increase by $2 (from $10 to $12). Drain Cleaner Registration renewal fee to increase by $2 (from $10 to $12). Drain Cleaner-Restricted Registration renewal fee to increase by $2 (from $10 to $12).

The amendments to §361.6 are adopted under and affect Texas Revised Civil Statutes Annotated Article 6243-101 ("Act"), §5(a), Senate Bill 187 (77th Legislature), Senate Bill 645 (77th Legislature) and the rule it amends. §5(a) of the Act authorizes, empowers and directs the Board to prescribe, amend and enforce all rules and regulations necessary to carry out the Act. Senate Bill 187 (77th Legislature) which established the Texas Online Authority and Senate Bill 645 (77th Legislature) which require state occupational licensing agencies, including the Texas State Board of Plumbing Examiners, to raise license and endorsement fees to pay for the development and use of "Texas Online", a state web site for electronic occupational license transactions. No other statute, article or code is affected by these amendments. The amendments have been reviewed by legal counsel and found to be within the state agency's authority to adopt.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 17, 2003.

TRD-200304333
Robert L. Maxwell
Administrator
Texas State Board of Plumbing Examiners
Effective date: September 1, 2003
Proposal publication date: May 23, 2003
For further information, please call: (512) 458-2145

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS

SUBCHAPTER J. STATE PARTICIPATION PROGRAM

31 TAC §§363.1002, 363.1003, 363.1006, 363.1007

The Texas Water Development Board (board) adopts amendments to 31 TAC Chapter 363, concerning the State Participation Program without changes to the proposed text as published in the June 6, 2003 issue of the *Texas Register* (28 TexReg 4407) and will not be republished. Amendments to §§363.1002, 363.1003, 363.1006 and 363.1007 relate to the administration and the level of financial investment of the State in projects eligible for funding from the State Participation Program.

The amendment to §363.1002 provides a definition of new water supply projects that identifies proposed projects which will create new, usable supplies of water. The purpose of this definition is to identify projects that create new supplies of water separate from projects that provide for retail water or wastewater services. Relying on this definition, amendments to §363.1003 create two new paragraphs. New paragraph (1) authorizes the board to financially participate in up to 80% of the costs of a new water supply project. Limited funding for state participation projects creates a necessity to prioritize the use of funds for projects. Financially participating at a higher level in projects that create new water supplies provides an additional incentive for the development of new supplies of water over other projects eligible for funding from the state participation program. A higher level of financial participation in these types of projects is consistent with the historic levels of financial participation undertaken by the state. New paragraph (2) authorizes the board to financially participate in up to 50% of the costs of all other projects that are eligible for the State Participation Program. This level of participation has provided support necessary for the viability of these types of projects and is determined to an appropriate level of state participation at this time. Amendments to §363.1006 will amend the dates for application submission, for application rating, and for board consideration. In this manner, applicants are assured of timely consideration of project applications while providing the board flexibility to adjust the amount of time for necessary for an adequate review of applications as it deems appropriate. Section 363.1007 will add a new rating criterion such that new water supply projects are entitled to receive 2 rating points. Providing additional points for new water supply projects further the purposes of emphasizing new water supply projects over other projects eligible for funding from the state participation program on a relative basis.

No comments were received on the proposed amendments.

Statutory authority: Water Code, §6.101.

Cross-reference to statute: Water Code, Chapter 16, Subchapters E and F; and Chapter 17, Subchapters D, E, and F.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on July 16, 2003.

TRD-200304306
Suzanne Schwartz
General Counsel
Texas Water Development Board
Effective date: August 5, 2003
Proposal publication date: June 6, 2003
For further information, please call: (512) 475-2052

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the *Texas Register* publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the *Texas Register* not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the *Texas Register* not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

The Commissioner of Insurance will consider a petition by the staff of the Texas Department of Insurance to amend the Texas Commercial Lines Statistical Plan (TCLSP)--General Reporting Instructions, Liability, Property, Businessowners, Commercial Automobile and Miscellaneous Commercial Quarterly Experience Reports. The proposed changes are necessary to implement the reporting of terrorism premium and loss experience resulting from the passage of the federal Terrorism Risk Insurance Act of 2002 (Public Law 107-297). In addition, the proposed changes are necessary to correct the name, mailing address and phone numbers for the statistical agent for Texas commercial line experience. Staff's petition (Ref. P-0703-15-I) was filed on July 21, 2003.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period as defined herein.

Staff proposes amendments to the TCLSP as follows:

General Reporting Instructions:

amend the Table of Contents of the TCLSP Manual to note the location of General Instructions for reporting terrorism premiums and losses.

correct information regarding the Insurance Services Office's Data Collection & Quality Assurance Division's name, mailing address and telephone numbers.

provide general instructions for reporting of terrorism coverages in Texas.

Quarterly Liability Experience Report:

add and amend fields and codes for reporting terrorism related premium and loss experience.

Quarterly Property Experience Report:

add and amend fields and codes for reporting terrorism related premium and loss experience.

Quarterly Businessowners Experience Report:

add and amend fields and codes for reporting terrorism related premium and loss experience.

Quarterly Commercial Automobile Experience Report:

add and amend fields and codes for reporting terrorism related premium and loss experience.

Quarterly Miscellaneous Commercial Experience Report:

add and amend fields and codes for reporting terrorism related premium and loss experience.

Staff requests that the proposed amendments be mandatory effective with the fourth quarter 2003 statistical plan reporting requirements.

The Commissioner has jurisdiction of this matter pursuant to the Insurance Code Article 5.96 and §38.204 and §38.207.

Copies of the full text of the staff petition and the proposed amendments are available for review in the Office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas, 78714-9104. For further information or to request copies of the petition and proposed amendments, please contact Sylvia Gutierrez at (512) 463-6327 (refer to Ref. No. P-0703-15-I).

Comments on the proposed amendments must be filed no later than 5:00 p.m. on September 1, 2003 to the Office of the Chief Clerk, Texas Department of Insurance, P.O. Box 149104, MC 113-2A Austin, Texas 78714-9104. An additional copy of the comments should be simultaneously submitted to C.H. Mah, Senior Associate Commissioner for Property and Casualty, P.O. Box 149104, MC105-5G, Austin, Texas 78714-9104.

This notification is made pursuant to the Insurance Code Article 5.96, which exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001).

TRD-200304413
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 22, 2003

Proposed Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO THE INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

Notice is given that the Commissioner of Insurance will consider a proposal made in a staff petition which seeks amendments of the Texas Automobile Rules and Rating Manual (the Manual), to adopt new and/or

adjusted 2001, 2002, 2003, and 2004 model Private Passenger Automobile Physical Damage Rating Symbols and revised identification information. Staff's petition (Ref. No. a-0703-16-I), was filed on July 23, 2003.

The new and/or adjusted symbols for the Manual's Symbols and Identification Section reflect data compiled on damageability, repairability, and other relevant loss factors for the listed 2001, 2002, 2003, and 2004 model vehicles.

A copy of the petition, including a 230-page exhibit with the full text of the proposed amendments to the Manual is available for review in the office of the Chief Clerk of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas. For further information or to request copies of the petition, please contact Sylvia Gutierrez at (512) 463-6327; refer to (Ref. No. A-0703-16-I).

Comments on the proposed changes must be submitted in writing no later than 5:00 p.m. on September 1, 2003 to the Office of the Chief Clerk, Texas Department of Insurance, P. O. Box 149104, MC 113-2A, Austin, Texas 78714-9104. An additional copy of comments is to be simultaneously submitted to Marilyn Hamilton, Associate Commissioner, Property & Casualty Program, Texas Department of Insurance, P. O. Box 149104, MC 104-PC, Austin, Texas 78714-9104.

A public hearing on this matter will not be held unless a separate request for a hearing is submitted to the Office of the Chief Clerk during the comment period defined above.

This notification is made pursuant to Insurance Code Article 5.96, which exempts it from the requirements of the Government Code, Chapter 2001 (Administrative Procedure Act).

TRD-200304434
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 23, 2003

REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Revised Agency Rule Review Plan

Texas Board of Pardons and Paroles

Title 37, Part 5

TRD-200304430
Filed: July 23, 2003

Proposed Rule Reviews

Texas Department of Health

Title 25, Part 1

The Texas Department of Health (department) will review and consider for readoption, revision, or repeal Title 25, Texas Administrative Code, Part 1. Texas Department of Health, Chapter 289. Radiation Control, Subchapter E. Registration Regulations, §§289.226, 289.227, 289.231, and Subchapter F. License Regulations, §289.257.

This review is in accordance with the Texas Government Code, §2001.039 regarding agency review of existing rules.

An assessment will be made by the department as to whether the reasons for adopting or readopting these rules continues to exist. This assessment will be continued during the rule review process. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the department.

Comments on the review may be submitted in writing within 30 days following the publication of this notice in the *Texas Register* to Linda Wiegman, Office of General Counsel, Texas Department of Health, 1100 West 49th Street, Austin, Texas 78756. Any proposed changes to these rules as a result of the review will be published in the Proposed Rule Section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the department.

TRD-200304339
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 17, 2003

Texas Workers' Compensation Commission

Title 28, Part 2

Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 130, concerning Impairment and Supplemental Income Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

CHAPTER 130 -IMPAIRMENT AND SUPPLEMENTAL INCOME BENEFTIS

§130.1 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment

§130.2 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by the Treating Doctor

§130.3 Certification of Maximum Medical Improvement and Evaluation of Permanent Impairment by a Doctor other than the Treating Doctor

§130.4 Presumption that Maximum Medical Improvement (MMI) has been Reached and Resolution when MMI has not been Certified

§130.5 Entitlement and Procedure for Requesting Designated Doctor Examinations related to Maximum Medical Improvement and Impairment Rating

§130.6 Designated Doctor Examinations for Maximum Medical Improvement and/or Impairment Ratings

§130.7 Acceleration of Impairment Income Benefits

§130.8 Initiating Payment of Impairment Income Benefits

§130.10 Commission Review of Employment Status during the Impairment Income Benefits Period

§130.11 Agreement for Monthly Payment of Impairment Income Benefits

§130.100 Applicability

§130.101 Definitions

§130.102 Eligibility for Supplemental Income Benefits; Amount

§130.103 Determination of Entitlement or Non-entitlement for the First Quarter

§130.104 Determination of Entitlement or Non-entitlement for Subsequent Quarters

§130.105 Failure to Timely File Application for Supplemental Income Benefits; Subsequent Quarters

§130.106 Permanent Loss of Entitlement to Supplemental Income Benefits

§130.107 Payment of Supplemental Income Benefits

§130.108 Contesting Entitlement or Amount of Supplemental Income Benefits; Attorney fEES

§130.109 Reinstatement of Entitlement if Discharged with Intent to Deprive of Supplemental Income Benefits

§130.110 Return to Work Disputes During Supplemental Income Benefits' Designated Doctor

The agency's reason for adopting the rules contained in this chapter continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 1, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200304438
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 23, 2003

Notice of Intention to Review

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 131, concerning Benefits-Lifetime Income Benefits, and Chapter 132, concerning Death Benefits-Death and Burial Benefits. This review is pursuant to the General Appropriations Act, Article IX, §167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

CHAPTER 131 - BENEFITS--LIFETIME INCOME BENEFITS

§131.1 Initiation of Lifetime Income Benefits

§131.2 Calculation of Lifetime Income Benefits

§131.3 Carrier's Petition for Payment of Benefits by the Subsequent Injury Fund

§131.4 Change in Payment Period; Purchase of Annuity for Lifetime Income Benefits

CHAPTER 132 - DEATH BENEFITS--DEATH AND BURIAL BENEFITS

§132.1 Calculation of Death Benefits

§132.2 Determination of Facts of Dependent Status

§132.3 Eligibility of Spouse To Receive Death Benefits

§132.4 Eligibility of a Child To Receive Death Benefits

§132.5 Eligibility of a Grandchild To Receive Death Benefits

§132.6 Eligibility of Other Surviving Dependents To Receive Death Benefits

§132.7 Duration of Death Benefits for Eligible Spouse

§132.8 Duration of Death Benefits for an Eligible Child

§132.9 Duration of Death Benefits for an Eligible Grandchild and any Other Eligible Dependents

§132.10 Payment of Death Benefits to the Subsequent Injury Fund

§132.11 Distribution of Death Benefits

§132.12 Redistribution of Death Benefits

§132.13 Burial Benefits

§132.14 Autopsy

§132.15 Definitions

§132.16 Change in Payment Periods; Purchase of Annuity for Death Benefits

§132.17 Denial, Dispute, and Payment of Death Benefits

The agency's reason for adopting the rules contained in these chapters continues to exist and it proposes to readopt these rules. Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on September 1, 2003 and submitted to Nell Cheslock, Legal Services, Office of General Counsel, Mailstop #4-D, Texas Workers' Compensation Commission, Southfield Building, 4000 South IH 35, Austin, Texas 78704-7491.

TRD-200304414
Susan Cory
General Counsel
Texas Workers' Compensation Commission
Filed: July 22, 2003

Adopted Rule Reviews

Credit Union Department

Title 7, Part 6

The Credit Union Commission has completed the review of Texas Administrative Code Title 7, Chapter 95, §95.100, relating to account insurance; §95.200, relating to appointment of liquidating agent; §95.300, relating to share and deposit guaranty credit union; §95.301, relating to authority for a guaranty credit union; §95.302, relating to powers; §95.303, relating to subordination of right, title, or interest; §95.304, relating to accounting for membership investment shares; §95.305, relating to audited financial statements; accounting procedures; and reports; and §95.306, relating to requirements of member credit unions. Notice of the proposed review was published in the April 25, 2003, issue of the *Texas Register* (28 TexReg 3531).

The Commission received no comments with respect to these rule. The Department believes that the reasons for initially adopting these rules continue to exist. The Commission finds that the reasons for initially adopting 7 TAC §§95.100, 95.200, 95.300, 95.301, 95.302, 95.303, 95.304, 95.305 and 95.306 continue to exist and readopts these sections without changes pursuant to the requirements of Government Code, §2001.039.

TRD-200304400
Harold E. Feeney
Commissioner
Credit Union Department
Filed: July 21, 2003

State Securities Board

Title 7, Part 7

Pursuant to the notice of proposed rule review published in the *Texas Register* (28 TexReg 2748) March 28, 2003, the State Securities Board (Board) has reviewed and considered for readoption, revision, or repeal, all sections of the following chapters of Title 7, Part 7 of the

Texas Administrative Code, in accordance with Texas Government Code, §2001.039: Chapter 113, Registration of Securities; Chapter 114, Federal Covered Securities; Chapter 123, Administrative Guidelines for Registration of Open-End Investment Companies; Chapter 125, Minimum Disclosures in Church and Nonprofit Institution Bond Issues; Chapter 135, Industrial Development Corporations and Authorities; and Chapter 137, Administrative Guidelines for Regulation of Offers.

The Board considered, among other things, whether the reasons for adoption of these rules continue to exist. After its review, the Board finds that the reasons for adopting these rules continue to exist and readopts these chapters, without changes, pursuant to the requirements of the Government Code.

No comments were received regarding the readoption of these chapters.

This concludes the review of 7 TAC Chapters 113, 114, 123, 125, 135, and 137.

TRD-200304396
Denise Voigt Crawford
Securities Commissioner
State Securities Board
Filed: July 21, 2003

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 16 TAC §25.489(g)(1)

Date: ______________

Address: ________________________________

ESI-ID: ________________________________

DISCONNECT NOTICE

Code #999

The State of Texas requires all customers to have a Retail Electric Provider (REP) before receiving electric service. Our records indicate that you do not have a REP and are not receiving bills for electric service. Thus, you have not been billed for the electricity used at these premises.

In order to avoid any disruption in your service, you must select and enroll with a REP no more than ten days from the date of this notice. **To ensure proper identification of your premise, please inform the REP you have a Code 999 order to process.** If you do not enroll with a REP within ten days, electricity to this address will be disconnected.

If you have already contacted a REP to set up an electric service account, we urge you to contact your REP to check the status of your request to avoid disconnection of service.

A list of REPs is listed on this notice. If you have selected a REP and believe this notice is in error, please contact your REP immediately. You may call the Public Utility Commission of Texas (PUC) toll-free at 1-888-782-8477 to address any questions that your REP cannot answer.

Figure: 19 TAC §101.23(a)

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards

Scale Scores Required to Achieve the "Met Standard" Level At the Standard Equivalent to the Panel's Recommendation Effective Beginning Spring 2005 Except as Provided in §101.7, Testing Requirements for Graduation

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	2100	36	2100						
4	42	2100	40	2100	32	2100				
5	44	2100	42	2100					40	2100
6	46	2100	42	2100						
7	48	2100	48	2100	44	2100				
8	50	2100	48	2100			48	2100		
9	52	2100	42	2100						
10	56	2100			73	2100	50	2100	55	2100
11	60	2100			73	2100	55	2100	55	2100
Spanish-Version Tests										
3	40	2100	36	2100						
4	42	2100	40	2100	32	2100				
5	44	2100	42	2100					40	2100
6	46	2100	42	2100						

* An essay rating of 2 or higher is required for Met Standard on the grades 4 and 7 writing tests and the grades 10 and 11 English language arts tests.

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards
Scale Scores Required to Achieve Commended Performance
Effective Beginning Spring 2003

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	2400	36	2400						
4	42	2400	40	2400	32	2400				
5	44	2400	42	2400					40	2400
6	46	2400	42	2400						
7	48	2400	48	2400	44	2400				
8	50	2400	48	2400			48	2400		
9	52	2400	42	2400						
10	56	2400			73	2400	50	2400	55	2400
11	60	2400			73	2400	55	2400	55	2400
Spanish-Version Tests										
3	40	2400	36	2400						
4	42	2400	40	2400	32	2400				
5	44	2400	42	2400					40	2400
6	46	2400	42	2400						

*An essay rating of 3 or higher is required for Commended Performance on the grades 4 and 7 writing tests.

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards

Scale Scores Required to Achieve the "Met Standard" Level
At the Standard Equivalent to 1 SEM below the Panel's Recommendation
Effective for the 2003-2004 School Year Except as Provided in §101.7, Testing Requirements for Graduation

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	2041	36	2064						
4	42	2047	40	2069	32	2060				
5	44	2037	42	2062					40	2016
6	46	2046	42	2044						
7	48	2061	48	2053	44	2067				
8	50	2057	48	2051			48	2058		
9	52	2050	42	2059						
10	56	2054			73	2071	50	2060	55	2046
11	60	2058			73	2072	55	2067	55	2068
Spanish-Version Tests										
3	40	2042	36	2059						
4	42	2025	40	2043	32	2049				
5	44	2026	42	2034					40	2017
6	46	2038	42	2038						

* An essay rating of 2 or higher is required for Met Standard on the grades 4 and 7 writing tests and the grades 10 and 11 English language arts tests.

Texas Assessment of Knowledge and Skills (TAKS) Scale Score Standards

Scale Scores Required to Achieve the "Met Standard" Level
At the Standard Equivalent to 2 SEM below the Panel's Recommendation
Effective for the 2002-2003 School Year Except as Provided in §101.7, Testing Requirements for Graduation

Grade	Mathematics		Reading		Writing / ELA *		Social Studies		Science	
	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut	Total TAKS Test Items	TAKS Scale Score Cut
3	40	1986	36	2029						
4	42	1997	40	2039	32	2023				
5	44	1978	42	2025					40	1940
6	46	1994	42	1989						
7	48	2023	48	2009	44	2035				
8	50	2015	48	2006			48	2016		
9	52	2000	42	2021						
10	56	2007			73	2045	50	2020	55	1993
11	60	2015			73	2045	55	2033	55	2035
Spanish-Version Tests										
3	40	1986	36	2019						
4	42	1954	40	1988	32	2000				
5	44	1957	42	1970					40	1941
6	46	1979	42	1976						

* An essay rating of 2 or higher is required for Met Standard on the grades 4 and 7 writing tests and the grades 10 and 11 English language arts tests.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Chapter 154. Child Support, Subchapter C. Child Support Guidelines - Revised 2003 Tax Charts

Revision Notes:

On May 28, 2003, the President signed into law the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27 (the "Act"). The Act accelerates the phase-in of certain marginal tax rate reductions for individuals that were enacted in the Economic Growth and Tax Relief Reconciliation Act of 2001, Pub. L. No. 107-16. In addition, the Act increases the levels of taxable income subject to the 10% individual tax rate. These provisions of the Act are effective for the 2003 calendar tax year. Accordingly, these provisions of the Act require revisions to the federal income tax information shown in the 2003 Tax Charts previously promulgated by the Office of the Attorney General of Texas.

A line computing net resources for an individual earning the federal minimum wage for a 40 hour week was added to the Employed Persons Tax Chart, and lines showing the gross monthly income corresponding to net resources of $6,000.00 were added to the Employed Persons Tax Chart and to the Self-Employed Persons Tax Chart.

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following revised tax charts for use during the remainder of 2003 to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

This agency hereby certifies that the tax charts have been reviewed by legal counsel and found to be within the agency's authority to publish.

EMPLOYED PERSONS
REVISED 2003 TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)*	Federal Income Taxes**	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$5.00	$641.45
$800.00	$49.60	$11.60	$15.00	$723.80
$892.67***	$55.35	$12.94	$24.27	$800.11
$900.00	$55.80	$13.05	$25.00	$806.15
$1,000.00	$62.00	$14.50	$35.00	$888.50
$1,100.00	$68.20	$15.95	$45.00	$970.85
$1,200.00	$74.40	$17.40	$55.00	$1,053.20
$1,300.00	$80.60	$18.85	$68.33	$1,132.22
$1,400.00	$86.80	$20.30	$83.33	$1,209.57
$1,500.00	$93.00	$21.75	$98.33	$1,286.92
$1,600.00	$99.20	$23.20	$113.33	$1,364.27
$1,700.00	$105.40	$24.65	$128.33	$1,441.62
$1,800.00	$111.60	$26.10	$143.33	$1,518.97
$1,900.00	$117.80	$27.55	$158.33	$1,596.32
$2,000.00	$124.00	$29.00	$173.33	$1,673.67
$2,100.00	$130.20	$30.45	$188.33	$1,751.02
$2,200.00	$136.40	$31.90	$203.33	$1,828.37
$2,300.00	$142.60	$33.35	$218.33	$1,905.72
$2,400.00	$148.80	$34.80	$233.33	$1,983.07
$2,500.00	$155.00	$36.25	$248.33	$2,060.42
$2,600.00	$161.20	$37.70	$263.33	$2,137.77
$2,700.00	$167.40	$39.15	$278.33	$2,215.12
$2,800.00	$173.60	$40.60	$293.33	$2,292.47
$2,900.00	$179.80	$42.05	$308.33	$2,369.82
$3,000.00	$186.00	$43.50	$323.33	$2,447.17
$3,100.00	$192.20	$44.95	$346.67	$2,516.18
$3,200.00	$198.40	$46.40	$371.67	$2,583.53
$3,300.00	$204.60	$47.85	$396.67	$2,650.88
$3,400.00	$210.80	$49.30	$421.67	$2,718.23
$3,500.00	$217.00	$50.75	$446.67	$2,785.58
$3,600.00	$223.20	$52.20	$471.67	$2,852.93
$3,700.00	$229.40	$53.65	$496.67	$2,920.28
$3,800.00	$235.60	$55.10	$521.67	$2,987.63
$3,900.00	$241.80	$56.55	$546.67	$3,054.98
$4,000.00	$248.00	$58.00	$571.67	$3,122.33
$4,250.00	$263.50	$61.63	$634.17	$3,290.70
$4,500.00	$279.00	$65.25	$696.67	$3,459.08
$4,750.00	$294.50	$68.88	$759.17	$3,627.45
$5,000.00	$310.00	$72.50	$821.67	$3,795.83
$5,250.00	$325.50	$76.13	$884.17	$3,964.20
$5,500.00	$341.00	$79.75	$946.67	$4,132.58
$5,750.00	$356.50	$83.38	$1,009.17	$4,300.95
$6,000.00	$372.00	$87.00	$1,071.67	$4,469.33
$6,250.00	$387.50	$90.63	$1,134.17	$4,637.70
$6,500.00	$403.00	$94.25	$1,200.17	$4,802.58
$6,750.00	$418.50	$97.88	$1,270.17	$4,963.45
$7,000.00	$434.00	$101.50	$1,340.17	$5,124.33
$7,500.00	$449.50****	$108.75	$1,480.17	$5,461.58
$8,000.00	$449.50	$116.00	$1,620.17	$5,814.33
$8,263.17*****	$449.50	$119.82	$1,693.85	$6,000.00
$8,500.00	$449.50	$123.25	$1,760.17	$6,167.08
$9,000.00	$449.50	$130.50	$1,900.17	$6,519.83
$9,500.00	$449.50	$137.75	$2,040.17	$6,872.58
$10,000.00	$449.50	$145.00	$2,180.17	$7,225.33
$10,500.00	$449.50	$152.25	$2,320.17	$7,578.08
$11,000.00	$449.50	$159.50	$2,460.17	$7,930.83
$11,500.00	$449.50	$166.75	$2,600.17	$8,283.58
$12,000.00	$449.50	$174.00	$2,743.01	$8,633.49
$12,500.00	$449.50	$181.25	$2,887.28	$8,981.97
$13,000.00	$449.50	$188.50	$3,051.49	$9,310.51
$13,500.00	$449.50	$195.75	$3,219.85	$9,634.90
$14,000.00	$449.50	$203.00	$3,389.88	$9,957.62
$14,500.00	$449.50	$210.25	$3,558.24	$10,282.01
$15,000.00	$449.50	$217.50	$3,728.27	$10,604.73

Footnotes to Employed Persons Revised 2003 Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($3,050.00, subject to reduction in certain cases, as described in the next paragraph of this footnote) and taking the standard deduction ($4,750.00).

For a single taxpayer with an adjusted gross income in excess of $139,500.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $139,500.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of $262,000.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly gross wages of $12,000.00 times 12 months equals $144,000.00. The excess over $139,500.00 is $4,500.00. $4,500.00 divided by $2,500.00 equals 1.80. The 1.80 amount is rounded up to 2. The reduction percentage is 4% (2 x 2% = 4%). The $3,050.00 deduction for one personal exemption is reduced by $122.00 ($3,050.00 x 4% = $122.00) to $2,928.00 ($3,050.00 - $122.00 = $2,928.00).

*** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($5.15 per hour) for a 40 hour week for a full year. $5.15 per hour x 40 hours per week x 52 weeks per year equals $10,712.00 per year. One-twelfth (1/12) of $10,712.00 equals $892.67.

**** For annual gross wages above $87,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2003 maximum Old-Age, Survivors and Disability Insurance tax of $5,394.00 per person (6.2% of the first $87,000.00 of annual gross wages equals $5,394.00). One-twelfth (1/12) of $5,394.00 equals $449.50.

***** This amount represents the point where the monthly gross income of an employed individual would result in $6,000.00 of net resources.

* *

References Relating to Employed Persons Revised 2003 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

   (1) Social Security Administration's notice dated October 18, 2002, and appearing in 67 Fed. Reg. 65,620 (October 25, 2002)

(2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) Tax Rate

(1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 3101(b))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2003 for Single Taxpayers

(1) The revised 2003 tax rate schedule is available on the IRS' web site at: http://www.irs.gov/formspubs/article/0,,id=109877,00.html

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended by the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, §§ 104, 105, 117 Stat. 752 (2003) (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2002-70, Section 3.09(1), which appears in Internal Revenue Bulletin 2002-46, dated November 18, 2002

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2002-70, Section 3.15, which appears in Internal Revenue Bulletin 2002-46, dated November 18, 2002

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

SELF-EMPLOYED PERSONS
REVISED 2003 TAX CHART

	Social Security Taxes			
Monthly Net Earnings From Self-Employment *	Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Hospital (Medicare) Insurance Taxes (2.9%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.05	$601.04
$800.00	$91.61	$21.43	$9.35	$677.61
$900.00	$103.06	$24.10	$18.64	$754.20
$1,000.00	$114.51	$26.78	$27.94	$830.77
$1,100.00	$125.97	$29.46	$37.23	$907.34
$1,200.00	$137.42	$32.14	$46.52	$983.92
$1,300.00	$148.87	$34.82	$55.82	$1,060.49
$1,400.00	$160.32	$37.49	$68.50	$1,133.69
$1,500.00	$171.77	$40.17	$82.44	$1,205.62
$1,600.00	$183.22	$42.85	$96.38	$1,277.55
$1,700.00	$194.67	$45.53	$110.32	$1,349.48
$1,800.00	$206.13	$48.21	$124.26	$1,421.40
$1,900.00	$217.58	$50.88	$138.20	$1,493.34
$2,000.00	$229.03	$53.56	$152.14	$1,565.27
$2,100.00	$240.48	$56.24	$166.08	$1,637.20
$2,200.00	$251.93	$58.92	$180.02	$1,709.13
$2,300.00	$263.38	$61.60	$193.96	$1,781.06
$2,400.00	$274.83	$64.28	$207.90	$1,852.99
$2,500.00	$286.29	$66.95	$221.84	$1,924.92
$2,600.00	$297.74	$69.63	$235.78	$1,996.85
$2,700.00	$309.19	$72.31	$249.72	$2,068.78
$2,800.00	$320.64	$74.99	$263.66	$2,140.71
$2,900.00	$332.09	$77.67	$277.60	$2,212.64
$3,000.00	$343.54	$80.34	$291.54	$2,284.58
$3,100.00	$354.99	$83.02	$305.48	$2,356.51
$3,200.00	$366.44	$85.70	$319.42	$2,428.44
$3,300.00	$377.90	$88.38	$338.38	$2,495.34
$3,400.00	$389.35	$91.06	$361.62	$2,557.97
$3,500.00	$400.80	$93.74	$384.85	$2,620.61
$3,600.00	$412.25	$96.41	$408.08	$2,683.26
$3,700.00	$423.70	$99.09	$431.32	$2,745.89
$3,800.00	$435.15	$101.77	$454.55	$2,808.53
$3,900.00	$446.60	$104.45	$477.79	$2,871.16
$4,000.00	$458.06	$107.13	$501.02	$2,933.79
$4,250.00	$486.68	$113.82	$559.10	$3,090.40
$4,500.00	$515.31	$120.52	$617.19	$3,246.98
$4,750.00	$543.94	$127.21	$675.27	$3,403.58
$5,000.00	$572.57	$133.91	$733.36	$3,560.16
$5,250.00	$601.20	$140.60	$791.44	$3,716.76
$5,500.00	$629.83	$147.30	$849.53	$3,873.34
$5,750.00	$658.46	$153.99	$907.61	$4,029.94
$6,000.00	$687.08	$160.69	$965.70	$4,186.53
$6,250.00	$715.71	$167.38	$1,023.78	$4,343.13
$6,500.00	$744.34	$174.08	$1,081.86	$4,499.72
$6,750.00	$772.97	$180.78	$1,139.95	$4,656.30
$7,000.00	$801.60	$187.47	$1,201.70	$4,809.23
$7,500.00	$858.86	$200.86	$1,331.81	$5,108.47
$8,000.00	$899.00****	$214.25	$1,464.31	$5,422.44
$8,500.00	$899.00	$227.64	$1,602.44	$5,770.92
$8,828.68*****	$899.00	$236.45	$1,693.23	$6,000.00
$9,000.00	$899.00	$241.03	$1,740.56	$6,119.41
$9,500.00	$899.00	$254.42	$1,878.69	$6,467.89
$10,000.00	$899.00	$267.82	$2,016.81	$6,816.37
$10,500.00	$899.00	$281.21	$2,154.94	$7,164.85
$11,000.00	$899.00	$294.60	$2,293.06	$7,513.34
$11,500.00	$899.00	$307.99	$2,431.19	$7,861.82
$12,000.00	$899.00	$321.38	$2,569.31	$8,210.31
$12,500.00	$899.00	$334.77	$2,710.29	$8,555.94
$13,000.00	$899.00	$348.16	$2,851.26	$8,901.58
$13,500.00	$899.00	$361.55	$3,006.82	$9,232.63
$14,000.00	$899.00	$374.94	$3,174.65	$9,551.41
$14,500.00	$899.00	$388.33	$3,340.79	$9,871.88
$15,000.00	$899.00	$401.72	$3,508.62	$10,190.66

Footnotes to Self-Employed Persons Revised 2003 Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C.) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** These amounts represent one-twelfth (1/12) of the annual Federal income tax calculated for a single taxpayer claiming one personal exemption ($3,050.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($4,750.00).

In calculating the annual Federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. The deduction under Section 164(f) of the Code is equal to one-half (1/2) of the self-employment taxes imposed by Section 1401 of the Code for the taxable year. For example, monthly net earnings from self-employment of $12,500.00 times 12 months equals $150,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $10,788.00 ($87,000.00 x 12.4% = $10,788.00). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $4,017.23 ($150,000.00 x .9235 x 2.9% = $4,017.23). The sum of the taxes imposed by Section 1401 of the Code for the taxable year equals $14,805.23 ($10,788.00 + $4,017.23 = $14,805.23). The deduction under Section 164(f) of the Code is equal to one-half (1/2) of $14,805.23 or $7,402.62.

For a single taxpayer with an adjusted gross income in excess of $139,500.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $139,500.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of $262,000.00. In no case is the deduction for the personal exemption reduced by more than 100%. For example, monthly net earnings from self-employment of $12,500.00 times 12 months equals $150,000.00. The $150,000.00 amount is reduced by $7,402.62 (i.e., the deduction under Section 164(f) of the Code -- see the immediately preceding paragraph of this footnote for the computation) to arrive at adjusted gross income of $142,597.38. The excess over $139,500.00 is $3,097.38. $3,097.38 divided by $2,500.00 equals 1.24. The 1.24 amount is rounded up to 2. The reduction percentage is 4% (2 x 2% = 4%). The $3,050.00 deduction for one personal exemption is reduced by $122.00 ($3,050.00 x 4% = $122.00) to $2,928.00 ($3,050.00 - $122.00 = $2,928.00).

**** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $87,000.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2003 maximum Old-Age, Survivors and Disability Insurance tax of $10,788.00 per person (12.4% of the first $87,000.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $10,788.00). One-twelfth (1/12) of $10,788.00 equals $899.00.

***** This amount represents the point where the monthly gross income of a self-employed individual would result in $6,000.00 of net resources.

* *

References Relating to Self-Employed Persons Revised 2003 Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

(a) Contribution Base

(1) Social Security Administration's notice dated October 18, 2002, and appearing in 67 Fed. Reg. 65,620 (October 25, 2002)

(2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. § 430)

(b) Tax Rate

(1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(a))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(b))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, § 13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 1402(a)(12))

3. Federal Income Tax

(a) Revised Tax Rate Schedule for 2003 for Single Taxpayers

(1) The revised 2003 tax rate schedule is available on the IRS' web site at: http://www.irs.gov/formspubs/article/0,,id=109877,00.html

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended by the Jobs and Growth Tax Relief Reconciliation Act of 2003, Pub. L. No. 108-27, §§ 104, 105, 117 Stat. 752 (2003) (26 U.S.C. § 1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2002-70, Section 3.09(1), which appears in Internal Revenue Bulletin 2002-46, dated November 18, 2002

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 63(c))

(c) Personal Exemption

(1) Revenue Procedure 2002-70, Section 3.15, which appears in Internal Revenue Bulletin 2002-46, dated November 18, 2002

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. § 164(f))

For information regarding this publication you may contact A.G. Younger, Agency Liaison at 512-463-2110.

TRD-200304425
Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: July 22, 2003

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Texas Building and Procurement Commission

Invitation for Bid Notice

TBPC Project No. 01-009-7614

Project Name: **Brown Heatley Building Masonry Veneer Restoration, 4900 North Lamar Boulevard, Austin, Texas 78751** for the Texas Building and Procurement Commission

Sealed Bids for this project will be received until **3:00 P.M., August 19, 2003, at the Bid Room, Room No. 180, 1711 San Jacinto, Austin, Texas 78701.** See the Invitation for Bid (IFB) for other delivery choices.

Plans and specifications may be obtained from **the O'Connell Robertson & Associates, Incl., 811 Barton Springs Road, Suite 900, Austin, Texas 78704, Phone: (512) 478-7286, Fax: (512) 478-7441 for a deposit of $100.00, refundable upon return of a complete, unmarked set(s).**

A mandatory (must attend and sign in) **Pre-Bid Conference will be held at 10:00 p.m. July 28, 2003 in Garage "H," Room 100, west of the Brown Heatley Building, which is located at 4900 North Lamar Boulevard, Austin, Texas 78751.** The TBPC will reject Bids submitted by firms that did not attend the mandatory Pre-Bid Conference.

Only bids submitted on the official CONTRACTOR'S BID FORM found in the Project Manual will be accepted.

The IFB may be obtained by contacting TBPC Internal Procurement, Attention: Deborah Norwood (Fax: (512) 463-3360), deborah.norwood@tbpc.state.tx.us or through the Electronic State Business Daily at:

http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=48761

No oral explanation in regard to the meaning of the Drawings and Specifications will be made and no oral instructions will be given before the award of the Contract. Discrepancies, omissions or doubts as to the meaning of Drawings and Specifications and all communications concerning the project shall be communicated in writing to the Deborah Norwood via fax at (512) 463-3360 or via e-mail at deborah.norwood@tbpc.state.tx.us for interpretation. Bidders should act promptly and allow sufficient time for a reply to reach them before the submission of their Bids. Any interpretation made will be in the form of an addendum to the Specifications, which will be forwarded to all known Bidders and its receipt by the Bidder shall be acknowledged on the Contractor's Bid Form or on the face of the Addendum and returned with the bid.

TRD-200304383
Cynthia de Roch
General Counsel
Texas Building and Procurement Commission
Filed: July 21, 2003

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. Requests for federal consistency review were deemed administratively complete for the following projects during the period of July 11, 2003, through July 17, 2003. The public comment period for these projects will close at 5:00 p.m. on August 22, 2003.

FEDERAL AGENCY ACTIONS:

Applicant: Department of the Navy; Location: The project is located adjacent to the Jewel Fulton Canal in Corpus Christi Bay, Nueces County, Texas. The project site can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates: Zone 14; Easting: 673900; Northing: 3081000. Project Description: The applicant requests authorization for 10-year maintenance dredging of the existing Electromagnetic Roll (EMR) facility and to expand the east side of the basin and a portion of the approach channel, located adjacent to the Jewel Fulton Canal in Corpus Christi Bay, Nueces County, Texas. Approximately 68,000 cubic yards of material would need to be removed from the existing facility to restore it to original design depths. The turning basin would be expanded approximately 100 feet to the east along its entire 500-foot length. A portion of the southeast corner of the basin and a portion of the approach channel measuring approximately 150 by 250 feet would be expanded and an approximate 75-square-foot area adjacent to the confluence of the approach channel and the Jewel Fulton Canal would also be dredged. All of these proposed expansion areas would be dredged to a design depth of -17 feet mean low tide with approximately 59,000 cubic yards of material to be removed. Both maintenance and new dredging would be done hydraulically and the material would be placed in the Good Hope Disposal Area, Cell "I." CCC Project No.: 03-0244-F1; Type of Application: U.S.A.C.E. permit application #20486(02) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Heritage Hotels; Location: The project is located on Aransas Bay at 200 South Fulton Beach Road, Rockport, Aransas County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Rockport, Texas. Approximate UTM Coordinates: Zone 14; Easting: 693359; Northing: 3105119. Project Description: The applicant proposes to dredge approximately 1.25 acres to construct a harbor that would accommodate 30 boat slips and two fishing piers. The applicant proposes to construct the harbor in six phases.

In Phase I, the applicant would construct a fishing pier with a walkway that is 4 feet wide and 55 feet long with a 10- by 20-foot terminal T-head structure and a 6- by 10-foot fish cleaning station adjacent to the T-head.

In Phase II, the applicant would construct a vinyl sheet pile breakwater that extends 175 feet east from the existing southeast corner bulkhead and continue another 268 feet in a northeasterly direction for a total breakwater length of approximately 443 feet.

In Phase III, the applicant would mechanically dredge an area that would cover approximately 1.25 acres and would remove approximately 6000 cubic yards of material from Aransas Bay. The material would be removed with a long reach track hoe and stockpiled on the deck of a barge. Any free water will drain from the deck of the barge. The loaded barge would be moved to the northwest corner of the project area and the dewatered material would be transferred to trucks, which would take the material to the placement area. The placement area is located west of the Lighthouse Inn across Fulton Beach Road.

In Phase IV, the applicant would construct a walkway and 28 boat slips 10 feet away from and parallel to the proposed breakwater. The walkway would be 5 feet wide and would be approximately 423 feet long. The walkway would have 14 finger piers that would be 3 feet wide and 26 feet long. The finger piers would be spaced approximately 30 feet apart and would have two pilings between the piers so that two boats could be docked between them. At the end of the walkway a 10- by 20-foot fishing pier would be constructed and a 10- by 20-foot platform would be constructed between the breakwater and walkway approximately 120 feet north of the southeast corner of the proposed breakwater.

In Phase V, the applicant proposes to construct a long fishing pier that would extend east from the southeast corner of the proposed breakwater. The pier would have a 4- by 130-foot walkway, a 10- by 20-foot terminal T-head, and two 6- by 10-foot fish cleaning stations.

In Phase VI, the applicant proposes to construct a second boat-docking facility with four slips. The dock would have a walkway that is 5 feet wide and 180 feet long with a 10- by 25-foot terminal L-head structure. Attached to the walkway would be two finger piers that are 3-feet wide and 26- feet long. Three rows of pilings would be driven near the finger piers to form four boat slips. CCC Project No.: 03-0245-F1; Type of Application: U.S.A.C.E. permit application #23014 is being evaluated 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: Walter Oil & Gas Corporation; Location: The project is to be installed in and/or through Blocks A-218, Galveston Area and Blocks A-560 and A-561, High Island Area, Offshore Texas, OCS Federal Waters. Project Description: Walter Oil & Gas Corporation has submitted to Minerals Management Services an application for a Right-of-Way pipeline to be installed in and/through Blocks A-218, Galveston Area and Blocks A-560 and A-561, High Island Area, Offshore Texas, OCS Federal Waters. CCC Project No.: 03-248-F1; Type of Application: Pipeline ROW Application according to MMS Notice to Lessees No. 2002-G15, issued effective December 20, 2002, and in compliance with 15 CFR 930.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Ms. Diane P. Garcia, Council Secretary, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or diane.garcia@glo.state.tx.us. Comments should be sent to Ms. Garcia at the above address or by fax at (512) 475-0680.

TRD-200304443
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: July 23, 2003

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Comptroller of Public Accounts

Notice of Coastal Protection Fee Suspension

The Comptroller of Public Accounts, administering agency for the collection of the Coastal Protection Fee, has received certification from the Commissioner of the General Land Office that the balance in the Coastal Protection Fund has exceeded the maximum amount allowed by law.

Pursuant to the Natural Resource Code, §40.155 and §40.156, the comptroller hereby provides notice of the suspension of the coastal protection fee effective September 1, 2003.

No fee shall be collected or required to be paid on crude oil transferred to or from a marine terminal on or after September 1, 2003, or until notice of the reinstatement of the fee is published in the *Texas Register*.

Inquiries should be directed to Bryant Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas, 78711.

TRD-200304340
Martin Cherry
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: July 17, 2003

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Notice of Request for Proposals

Pursuant to Chapter 2254, Subchapter B, and Sections 403.011 and 403.020, Texas Government Code, the Comptroller of Public Accounts (Comptroller) announces the issuance of a Request for Proposals (RFP #159a) from qualified, independent firms to provide pooled consulting services to Comptroller. The successful respondent(s) will assist Comptroller in conducting management and performance reviews of various functions of independent school districts throughout the state on an as-need, as-requested basis. Comptroller reserves the right, and anticipates that multiple qualified, independent consulting firms may be selected to participate in a pooled consulting contract as set forth in this RFP. The successful respondent(s) will be expected to begin performance of the contract or contracts, if any, upon assignment on or about September 1, 2003.

Contact: Parties interested in submitting a proposal should contact Clay Harris, Assistant General Counsel, Contracts, Comptroller of Public Accounts, 111 E. 17th St., ROOM G-24, Austin, Texas, 78774, telephone number: (512) 305-8673, to obtain a copy of the RFP. Comptroller will mail copies of the RFP only to those specifically requesting a copy. The RFP was made available for pick-up at the above-referenced address on Friday, August 1, 2003, between 10:00 a.m. and 5 p.m., Central Zone Time (CZT), and during normal business hours thereafter. Comptroller also made the complete RFP available electronically on the Texas Marketplace at: http://esbd.tbpc.state.tx.us after 10 a.m. (CZT) on Friday, August 1, 2003.

Mandatory Letters of Intent and Questions: All Mandatory Letters of Intent and questions regarding the RFP must be sent via facsimile to Mr. Harris at: (512) 475-0973, not later than 2:00 p.m. (CZT), on Friday, August 15, 2003. Official responses to questions received by the foregoing deadline will be posted electronically on the Texas Marketplace no later than August 18, 2003, or as soon thereafter as practical. Mandatory Letters of Intent received after the 2:00 p.m., August 15th deadline will not be considered. Respondents shall be solely responsible for confirming the timely receipt of Mandatory Letters of Intent to propose.

Closing Date: Proposals must be received in Assistant General Counsel's Office at the address specified above (ROOM G-24) no later than 2 p.m. (CZT), on Friday, August 22, 2003. Proposals received after this time and date will not be considered. Proposals will not be accepted from respondents that do not submit mandatory letters of intent by the August 15, 2003, deadline. Respondents shall be solely responsible for confirming the timely receipt of proposals.

Evaluation and Award Procedure: All proposals will be subject to evaluation by a committee based on the evaluation criteria and procedures set forth in the RFP. Comptroller will make the final decision regarding the award of a contract or contracts. Comptroller reserves the right to award one or more contracts under this RFP. Comptroller reserves the right to accept or reject any or all proposals submitted. Comptroller is under no legal or other obligation to execute any contracts on the basis of this notice or the distribution of any RFP. Comptroller shall not pay for any costs incurred by any entity in responding to this Notice or the RFP.

The anticipated schedule of events is as follows: Issuance of RFP - August 1, 2003, 10 a.m. CZT; All Mandatory Letters of Intent and Questions Due - August 15, 2003, 2 p.m. CZT; Official Responses to Questions Posted - August 18, 2003, or as soon thereafter as practical; Proposals Due - August 22, 2003, 2 p.m. CZT; Contract Execution - September 1, 2003, or as soon thereafter as practical; Commencement of Project Activities - September 1, 2003.

TRD-200304433
Pamela Smith
Deputy General Counsel for Contracts
Comptroller of Public Accounts
Filed: July 23, 2003

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.009, and 304.003, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 28, 2003 - August 3, 2003 is 18% for Consumer [1]/Agricultural/Commercial[2]/credit thru $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of July 28, 2003 - August 3, 2003 is 18% for Commercial over $250,000.

The judgment ceiling as prescribed by §304.003 for the period of August 1, 2003 - August 31, 2003 is 5% for Consumer/Agricultural/Commercial/credit thru $250,000.

The judgment ceiling as prescribed by §304.003 for the period of August 1, 2003 - August 31, 2003 is 5% for Commercial over $250,000.

[1]Credit for personal, family or household use.

[2]Credit for business, commercial, investment or other similar purpose.

TRD-200304407
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 22, 2003

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Deep East Texas Council of Governments

Request for Proposals for Interoperable Communication

I. Overview

Overview: The Deep East Texas Council of Governments (DETCOG) is accepting proposals to retain a qualified firm/individual to provide professional consulting services for the development of a regional interoperable communications plan. The firm/individual should have no conflicts of interest with any vendor of communications equipment.

II. Obtaining Full RFP and Submission Information

The full RFP can be obtained at http://www.detcog.org or by contacting:

Van Bush, Director of Regional 9-1-1/Emergency Services

Phone: (409) 384-5704 x265

FAX: (409) 384-5390

Email: vbush@detcog.org

Submissions are due to DETCOG no later than 5 PM on August 22, 2003.

TRD-200304435
Walter Diggles
Executive Director
Deep East Texas Council of Governments
Filed: July 23, 2003

♦ ♦ ♦

Texas Education Agency

Request for Applications Concerning Texas 21st Century Community Learning Centers Grant Program, Cycle 2

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-03-021 from local educational agencies (LEA) including public school districts, open-enrollment charter schools and regional education service centers; community-based organizations (CBOs); and other public or private entities, non-profit or for profit, or a consortium of two or more agencies, organizations, or entities to establish or expand community learning centers. Eligible applicants include city or county governments, faith-based organizations, institutions of higher education, and for profit corporations. A shared services arrangement (SSA) or two or more LEAs is also eligible to apply.

Description. The purpose of the Texas 21st Century Community Learning Centers Cycle 2 grant program is to provide opportunities for communities to establish or expand activities in community learning centers that: (1) offer academic enrichment, including providing tutorial services to help children, particularly students who attend low performing schools, to meet state and local student academic achievement standards in core academic subjects, such as reading, mathematics, and science; (2) offer students a broad array of additional services, programs, and activities such as youth development activities, drug and violence prevention programs, counseling programs, art, music, and physical education and fitness programs, and technology education programs that are designed to reinforce and complement the regular academic program of participating students; and (3) offer families of students served by community learning centers opportunities for literacy and related educational development. Program services must be offered only when schools are not in session (before or after school, during holidays, or during summer recess). Centers can be located in elementary or secondary schools or other similarly accessible facilities. The program must be carried out in active collaboration with the schools the

students attend. Applications must provide for partnerships between an LEA, a CBO, and other public or private organizations, if appropriate.

Dates of Project. Applicants should plan for a starting date of no earlier than March 1, 2004, and an ending date of no later than May 31, 2005. The initial grant period will be fifteen months.

Project Amount. A total of approximately $22,000,000 is available for funding approximately 130 single centers during the summer of 2004 and during the 2004-2005 school year. The grant request may not be less than $50,000 nor greater than $175,000 per center, not exceeding $875,000 for a total of five centers. Each community learning center may serve students on more than one campus, and a campus may be served through only one community learning center. Project funding in the second year and third years will be based on satisfactory progress of the first- and second-year objectives and activities, respectively, on appropriations by the U. S. Congress, the number of centers established, the number of students and campuses served by each center, and on the activities to be implemented during out-of- school time throughout the grant period. This project is funded 100% from federal funds.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objective(s) and intent of the project. Applications must address each statutory requirement as specified in the RFA to be considered for funding and must designate the specific campus(es) that meet the eligibility requirements of the grant in order to determine the students and families to be served in the 21st Century Community Learning Center. One application will be limited to not more than five community learning center(s).

The TEA will not award a grant to an applicant receiving an average score of below 70. The TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA and that are most advantageous to the project.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. Prospective applicants will be provided an opportunity to receive general and clarifying information from TEA about the scope of the Texas 21st Century Community Learning Centers, Cycle 2 grant program on September 3, 2003, from 1:00 to 4:00 p.m. on The Texas Educational Telecommunication Network (TETN) available at each regional education service center and some of the larger school districts. The entire conference will be videotaped. Pre-conference questions may be sent to gkidwell@tea.state.tx.us prior to August 25, 2003. Each person attending will be required to sign a register setting out the representative's name, the applicant organization represented, and its name, address, and telephone number. Prospective applicants who are not able to attend the Applicants' Conference may request a copy of the videotape at no charge from the Division of Chapter 37/Safe Schools of the TEA.

Requests for Additional Information. In order to assure that no prospective applicant may obtain a competitive advantage because of acquisition of information unknown to other prospective applicants, any additional information that is different from or in addition to information provided in the RFA or at the Applicant's Conference will be provided only in response to written inquiries. Copies of all such inquiries and the written answers thereto will be posted on TEA's Grants Administration website.

Unless otherwise noted, all inquiries for information must be made in writing to the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Bldg., 1701 N. Congress Avenue, Austin, TX 78701-1494. The RFA number must be identified in the written request for information.

Requesting the Application. A complete copy of RFA #701-03-021 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by e-mailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA and questions and answers will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Geraldine Kidwell, Division Chapter 37/Safe Schools, TEA, (512) 463-9068.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, October 30, 2003, to be considered for funding.

TRD-200304446
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: July 23, 2003

Request for Applications (RFA) Concerning State Engineering and Science Recruitment (SENSR) Fund, 2003-2004

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) # 701-03-024 from organizations that qualify for exemption from federal income tax under the Internal Revenue Code, 501 (c)(3), and that do not distribute net earnings to any private shareholder or other individual. The organization must serve groups of women or minority group members who, considering their percentages of the Texas population, are under-represented at institutions of higher education in programs of engineering and applied sciences.

Description. The purpose of this program is to allocate funds to eligible organizations to establish or operate educational programs. The programs will support the recruitment of women and members of ethnic minority groups to assist them in preparing for, or participating in, programs leading to an undergraduate degree in engineering or science from an institution of higher education. Funding shall also be used to disseminate information concerning career opportunities in engineering and science, as well as information about these programs that are funded under the requirements of the legislative authority noted previously.

Dates of Project. The State Engineering and Science Recruitment (SENSR) Fund project will be implemented during the 2003-2004 and 2004-2005 school years. Applicants should plan for a starting date of no earlier than January 1, 2004, and an ending date of no later than August 31, 2004, for the project's first year.

Project Amount. Funding will be provided for approximately 16 projects. Each project will receive a maximum of $25,000 for the 2003-2004 school year. For the 2003-2004 fiscal year, this project will distribute a total amount of approximately $394,920.00 subject to the availability of funds and approval of the commissioner of education.

Project funding in the second year will be based on satisfactory progress of the first-year objectives and activities and on general budget approval.

Selection Criteria. Applications will be selected based on the independent reviewers' assessment of each applicant's ability to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant program and the extent to which the application addresses the primary objective(s) and intent of the project. Applications must address each requirement as specified in the RFA to be considered for funding. Preference shall be given to projects that stress the development of mathematical and scientific competence. Projects in the social sciences will not be considered. The TEA reserves the right to select from the highest ranking applications those that would serve the most participants who are women and under- represented minority group members in the objectives specified. Other project quality indicators are specified throughout the RFA. To be approved for funding, projects offered by eligible organizations must meet certain guidelines. Each project must: (1) use professional volunteers at each level of instruction; (2) require parental involvement; (3) coordinate with public school preparation for scientific and mathematics careers; (4) coordinate with post-secondary educational institutions; (5) involve organizations of women and minority group members; (6) provide demonstrated professional leadership in educational activities for women and minority group members; and (7) be compatible with state and federal laws governing education.

The TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Requesting the Application. A complete copy of RFA # 701-03-024 may be obtained by writing the Document Control Center, Room 6-108, Texas Education Agency, William B. Travis Building, 1701 N. Congress Avenue, Austin, Texas 78701; by calling (512) 463-9304; by faxing (512) 463-9811; or by emailing dcc@tea.state.tx.us. Please refer to the RFA number and title in your request. Provide your name, complete mailing address, and phone number including area code. The announcement letter and complete RFA will also be posted on the TEA website at http://www.tea.state.tx.us/grant/announcements/grants2.cgi for viewing and downloading.

Further Information. For clarifying information about the RFA, contact Gregory Travillion, Office of Education Services, Texas Education Agency, (512) 475-0228.

Deadline for Receipt of Applications. Applications must be received in the Document Control Center of the TEA by 5:00 p.m. (Central Time), Thursday, October 16, 2003 to be considered for funding.

TRD-200304445
Cristina De La Fuente-Valadez
Manager, Policy Planning
Texas Education Agency
Filed: July 23, 2003

Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Skinny's, Inc., Docket No. 2000-0295-PST-E on July 11, 2003 assessing $94,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding B&S Cattle Feeders, L.L.C., Docket No. 2000-0466- AGR-E on July 11, 2003 assessing $11,875 in administrative penalties with $11,275 deferred.

Information concerning any aspect of this order may be obtained by contacting James Biggins, Staff Attorney at (210) 403-4017, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Ron Laney Oil Co., Inc., Docket No. 2000-1258-PST-E on July 11, 2003 assessing $68,400 in administrative penalties with $67,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Robin Chapman, Staff Attorney at (512) 239-0497, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rio Concho Aviation, Inc., Docket No. 2002-0518-PST- E on July 11, 2003 assessing $1,500 in administrative penalties with $300 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Petty, Staff Attorney at (512) 239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hall Grapevine Corporation dba Hall Johnson Chevron, Docket No. 2001-1081-PST-E on July 11, 2003 assessing $12,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Lemanczyk, Staff Attorney at (512) 239-5915, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Jeff Lyon dba A-1 Metal Recyclers, Docket No. 2000- 0059-MLM-E on July 11, 2003 assessing $14,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512) 239-5528, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Western Environmental of Oklahoma, L.L.C., Docket No. 1999-0412-IHW-E on July 11, 2003 assessing $48,950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Richard O'Connell, Staff Attorney at (512) 239-5528, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Lamesa, Docket No. 2002-0728-PST-E on July 11, 2003 assessing $2,000 in administrative penalties with $400 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pilkington's Big Tex Oil Distributors, Inc., Docket No. 2002-0441-PST-E on July 11, 2003 assessing $4,500 in administrative penalties with $3,900 deferred.

Information concerning any aspect of this order may be obtained by contacting James Fleming, Enforcement Coordinator at (512) 239-5806, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilcorp Energy Company, Docket No. 2002-0924-AIR-E on July 11, 2003 assessing $750 in administrative penalties with $150 deferred.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Masters Resources, LLC, Docket No. 2002-1318-AIR-E on July 11, 2003 assessing $3,000 in administrative penalties with $600 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hoang Van Nguyen dba Nick's Grocery, Docket No. 2002-0976-PST-E on July 11, 2003 assessing $8,550 in administrative penalties with $7,950 deferred.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 898-3838, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Oiltanking Houston, L.P., Docket No. 2002-1362-AIR-E on July 11, 2003 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Gilbert Angelle, Enforcement Coordinator at (512) 239-4489, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pelican Bay, Docket No. 2002-0462-PWS-E on July 11, 2003 assessing $2,188 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 588-5886, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Southwest Utilities, Inc. dba Piney Point Subdivision Water System, Docket No. 2002-1267-PWS-E on July 11, 2003 assessing $394 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Spur Services, Inc. dba Spur Texaco, Docket No. 2001- 1186-PST-E on July 11, 2003 assessing $3,500 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Aniekeme Udoetok, Enforcement Coordinator at (512) 239-0739, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sterlin Stringer dba Stringer's Auto, Docket No. 2002- 1134-AIR-E on July 11, 2003 assessing $950 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at (409) 899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Kippur Corporation, Docket No. 2003-0248-AIR-E on July 11, 2003 assessing $850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Kelley, Enforcement Coordinator at (915) 834-4956, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Frisia Farms Dairy #1, L.L.C., Docket No. 2002-1082- AGR-E on July 11, 2003 assessing $2,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Glazer's Wholesale Drug Company, Inc., Docket No. 2002-1367-PST-E on July 11, 2003 assessing $1,800 in administrative penalties with $360 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (713) 422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Harris County Municipal Utility District No. 166, Docket No. 2003-0011-MWD-E on July 11, 2003 assessing $4,000 in administrative penalties with $800 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jackson County Water Control & Improvement District No. 1, Docket No. 2002-1406-PWS-E on July 11, 2003 assessing $1,523 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Baumgartner, Enforcement Coordinator at (361) 825-3131, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tri-Union Development Corporation, Docket No. 2002- 1084-AIR-E on July 11, 2003 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting Stacey Young, Enforcement Coordinator at (512) 239-1899, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Troy, Docket No. 2002-1323-MWD-E on July 11, 2003 assessing $5,775 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at (512) 239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Weslaco, Docket No. 2002-0664-MSW-E on July 11, 2003 assessing $12,500 in administrative penalties with $1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Sandra Alaniz, Enforcement Coordinator at (956) 430-6044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Red River County Water Control & Improvement District No. 1 - Langford Creek, Docket No. 2003-0001-WR-E on July 11, 2003 assessing $525 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hydro Conduit of Texas, LP dba Rinker Materials Moor- Tex, Docket No. 2002-1347-PWS-E on July 11, 2003 assessing $3,038 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Brian Lehmkuhle, Enforcement Coordinator at (512) 239-4482, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sebastian Cotton and Grain, Ltd., Docket No. 2003- 0105-AIR-E on July 11, 2003 assessing $510 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jaime Garza, Enforcement Coordinator at (956) 430-6030, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding King Fuels, Inc., Docket No. 2002-1325-PST-E on July 11, 2003 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at (713) 767-3607, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Lower Valley Water District, Docket No. 2002-1042- PWS-E on July 11, 2003 assessing $6,160 in administrative penalties with $1,232 deferred.

Information concerning any aspect of this order may be obtained by contacting Subhash Jain, Enforcement Coordinator at (512) 239-5867, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Clinton Lynn, Docket No. 2002-1251-MWD-E on July 11, 2003 assessing $950 in administrative penalties with $190 deferred.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Nasim Shakeeb dba Clark Road Mobil, Docket No. 2002-1409-AIR-E on July 11, 2003 assessing $575 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Carl Schnitz, Enforcement Coordinator at (512) 239-1892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Robert Bader and Cindy Bader, Docket No. 2002-0661- MLM-E on July 11, 2003 assessing $1,900 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at (512) 239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Diamond Shamrock Refining Company, L.P., Docket No. 2002-1233-AIR-E on July 11, 2003 assessing $1,840 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at (361) 825-3288, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Drilling Specialities Company LLC dba DSC Drilling Specialties Company LLC, Docket No. 2002-0839-IWD-E on July 11, 2003 assessing $13,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at (713) 767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding EPGT Texas Pipeline, L.P., Docket No. 2002-1184-AIR- E on July 11, 2003 assessing $10,350 in administrative penalties with $2,070 deferred.

Information concerning any aspect of this order may be obtained by contacting Sheila Smith, Enforcement Coordinator at (512) 239-1670, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Flying J Inc, Docket No. 2002-1122-MWD-E on July 11, 2003 assessing $1,000 in administrative penalties with $200 deferred.

Information concerning any aspect of this order may be obtained by contacting Gloria Stanford, Enforcement Coordinator at (512) 239-1871, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Chemicals Incorporated, Docket No. 2002-1417-IWD-E on July 11, 2003 assessing $4,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kimberly McGuire, Enforcement Coordinator at (512) 239-4761, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Richard Alonso dba Alonso Inspections, Docket No. 2002-1159-AIR-E on July 11, 2003 assessing $625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Fox, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jewel Alt dba Alt Dairy Farm, Docket No. 2002-1364- AGR-E on July 11, 2003 assessing $5,130 in administrative penalties with $1,026 deferred.

Information concerning any aspect of this order may be obtained by contacting Merrilee Gerberding, Enforcement Coordinator at (512) 239-4490, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Arnold Crushed Stone, Inc., Docket No. 2003-0021-AIR- E on July 11, 2003 assessing $1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Miriam Hall, Enforcement Coordinator at (512) 239-1044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Syed H. Ali dba Blanco Groceries, Docket No. 2002- 1099-PST-E on July 11, 2003 assessing $2,250 in administrative penalties with $450 deferred.

Information concerning any aspect of this order may be obtained by contacting Malcolm Ferris, Enforcement Coordinator at (210) 403-4061, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Brinker Texas, LP dba Chili's Restaurant, Docket No. 2003-0130-EAQ-E on July 11, 2003 assessing $1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at (512) 339-2929, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cambs Marine Service, L.L.C., Docket No. 2002-0953- AIR-E on July 11, 2003 assessing $7,350 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Suzanne Walrath, Enforcement Coordinator at (512) 239-2134, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding United Petroleum Transports, Inc., Docket No. 2002- 1219-PST-E on July 11, 2003 assessing $1,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Diana Grawitch, Staff Attorney at (512) 239-0939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Skinny's, Inc., Docket No. 2003-0447-PST-E on July 11, 2003 assessing $66,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sid Richardson Gasoline, Ltd., Docket No. 2002-1291- AIR-E on July 11, 2003 assessing $3,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Speaker, Staff Attorney at (512) 239-2548, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200304428
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 22, 2003

Invitation to Comment-Draft July 2003 Update to the Water Quality Management Plan for the State of Texas

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft July 2003 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update).

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of the Federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas pollutant discharge elimination system (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities and designated management agency information.

A copy of the draft July 2003 WQMP update may be found on the commission's Web site located at *http://www.tnrcc.state.tx.us/permitting/waterperm/wqmp/index.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Ms. Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on September 2, 2003. For further information or questions, please contact Ms. Vignali at (512) 239-1303 or by e-mail at *nvignali@TCEQ.state.tx.us.*

TRD-200304415
Stephanie Bergeron
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 22, 2003

Notice of Amendment to the Air Quality Standard Permit for Hot Mix Asphalt Plants

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing an air quality standard permit for hot mix asphalt plants (HMAPs). The new air quality standard permit became effective July 10, 2003. This standard permit is applicable to those facilities and associated equipment which produce standard hot mix asphalt, asphalt mixes made with performance grade binders, asphalt mixes made with crumb rubber, and pre-coat aggregate; and for which throughput is limited to no more than 400 tons per hour.

Copies of the standard permit for HMAPs may be obtained from the TCEQ Web site at *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/athrize.htm#stdpmt* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1240.

OVERVIEW OF AIR QUALITY STANDARD PERMIT

Based on the results of a protectiveness review, the commission is issuing a standard permit for HMAPs under Texas Health and Safety Code, §382.05195 and 30 TAC Chapter 116, Subchapter F, Standard Permits. The commission currently authorizes HMAPs under the conditions of 30 TAC Chapter 106, Permits by Rule, or under Chapter 116, Control of Air Pollution by Permits for New Construction or Modification. The general public often expresses concern with HMAP registration

applications. These objections often include traffic safety, noise, appearance, and property values. These concerns are beyond the commission's jurisdiction to address. The general public also expresses concerns over nuisance dust, odor, ambient air quality, and potential negative health impacts. These issues are the focus of the HMAP protectiveness review and the proposed conditions of the standard permit.

The commission is including requirements to minimize dust emissions, property line distance limitations, and opacity and visible emission limitations based on computer dispersion modeling, impacts analysis, and plant observations performed to verify the protectiveness of the standard permit. The commission has concluded research which shows that the standard permit for HMAPs is protective of the public health and welfare and that facilities which operate under the conditions specified will comply with TCEQ regulations.

The standard permit is designed to authorize both temporary and permanent HMAPs. However, it is not intended to provide an authorization mechanism for all possible unit configurations or for unusual operating scenarios. Those facilities which cannot meet the standard permit conditions may apply for an air quality permit under §116.111, General Application.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with §116.603, the TCEQ published notice of the proposed standard permit in the January 10, 2003 issue of the *Texas Register* (28 TexReg 501). The notice was also published in the newspapers of the largest general circulation in the following metropolitan areas: Amarillo; Austin; Corpus Christi; Dallas; El Paso; Houston; Lower Rio Grande Valley; Lubbock; Permian Basin; San Antonio; and Tyler. The date for these publications was January 10, 2003. The comment period closed on February 13, 2003.

PUBLIC MEETINGS

A public meeting on the proposal was held on February 13, 2003 at 1:30 p.m., at the Texas Commission on Environmental Quality. The meeting was attended by 15 people and oral comments were taken from one attendee and written comments were received from three.

ANALYSIS OF COMMENTS

Written comments were received from Harris County Public Health and Human Services Pollution Control Division (HCPC); Koch Materials Company (KMC); the Associated General Contractors of America (AGC); the Texas Asphalt Pavement Association (TAPA); APAC-Texas, Inc. (AT); Reece Albert, Inc. (RA); and Colorado Materials, Inc. (CM).

Additionally oral comments were received from AT.

HCPC commented that in addition to providing notification 30 days in advance to the appropriate TCEQ regional office, the owner/operator of an HMAP relocating to a public works site should also give notification 30 days in advance to any local air pollution control agency having jurisdiction.

The commission agrees with the comment. Subsection (3)(B) of the standard permit has been changed to include a requirement to notify, "any local air pollution control agency having jurisdiction," no less than 30 days prior to locating on the site.

KMC requested that the limit for styrene-butadiene-styrene (SBS) polymers in subsection (1)(Q) be raised from 6% by weight of the asphalt mix to 10% by weight based on the availability of asphalt binder products currently on the market and information indicating that these products will not result in increased volatile organic compound (VOC) emissions.

The commission agrees with this comment. The 6% by weight limitation was based solely on values represented in past permitting actions and the commission believes that the standard permit should reflect industry norms, provided that they are protective of public health and safety. The SBS polymer has a total volatile matter content of less than 0.7% by weight. The volatile matter is approximately 99% water. This material is not expected to produce any excess emissions when heated within the range allowed by this standard permit.

AGC, AT, RA, and CM requested that the waiver of the 45-day limit in subsection (1)(G) of the standard permit be deleted.

The commission agrees with this comment. This condition has been removed from the standard permit.

TAPA commented that plants using wet scrubbers as the control device need time to comply with the requirement to use a fabric filter and requested that a transition period be included for these plants to purchase and install filters.

The commission disagrees with this comment. Plants currently operating under another method of authorization (PBR or regular permit) with a wet scrubber as a control device may continue to operate under that authorization until the plant is moved or modified. For plants that require reauthorization due to a move or modification, authorization under a regular new source review permit is still available.

AGC, AT, RA, CM, and TAPA suggested the use of a memorandum that would allow use of additional mix additives as they become available.

Authorization of modification by memorandum is not supported by statute or regulation. Additional mix additives may be authorized under §§116.116(e), 116.117, and 116.118, as long as the emissions from the additional additives conform to the specific requirements in these sections.

AGC, AT, RA, CM, and TAPA requested that, for plants that comply with the requirements for daylight hours operation, the truck load-out be restricted to operation no earlier than one hour after sunrise and that the commission should allow mix production and silo filling prior to that time.

The commission agrees with this comment. Operation of emission units other than the truck load-out prior to one hour after sunrise should not result in adverse off-property impacts. Subsection (1)(T) of the standard permit has been changed to allow emission units other than the truck load-out a start time of one hour before sunrise. However, the commission believes that it is important to insure compliance with the start time of one hour after sunrise for the truck load-out and has added a record keeping requirement for the start and stop times of the truck load-out.

AGC, AT, RA, and CM commented that since HMAPs do not typically have the equipment for quality control testing of asphalt cement, it would be appropriate for the supplier to certify the volatility factor required by subsection (1)(W)(vi) of the standard permit.

The commission agrees with this comment. Subsection (1)(V)(vi) of the standard permit requires that a record of the volatility factor be kept and does not require owner/operators to conduct the testing prescribed in American Society for Testing & Materials method D2872. The staff's intent is for permit holders to obtain the volatility factor for each type of asphaltic cement used from the manufacturer.

TAPA requested that TCEQ provide guidelines for acceptable data in lieu of testing (DILOT) demonstrations that are allowed under subsection (2)(A) of the standard permit.

The DILOT guidelines are available from the TCEQ Field Operations Division.

AGC, AT, RA, and CM asked whether the requirement to sample under subsection (5)(A) of the standard permit applies each time the plant is moved and relocated and whether DILOT would be accepted.

The requirement to sample VOC emissions for crumb rubber is intended to be a one-time test for each facility. A separate test will not be required each time the facility is moved. However, the concentration of crumb rubber used in the asphalt mix at the time of the test becomes the maximum authorized by this standard permit. Any increase in the concentration of crumb rubber in the asphalt mix would require retesting. No DILOT reports will be accepted as a replacement for stack sampling on plants using crumb rubber asphalt mix.

TRD-200304432

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2003

Notice of Amendments to the Air Quality Standard Permit for Concrete Batch Plants

The Texas Commission on Environmental Quality (TCEQ or commission) is issuing amendments to the air quality standard permit for concrete batch plants (CBPs). The amendments to the air quality standard permit became effective July 10, 2003. The amendments to the standard permit for concrete batch plants are applicable to an owner or operator of a temporary concrete plant that has been previously registered with the commission for this standard permit and supplies concrete to a public works project which is located in or contiguous to the right-of-way. In lieu of the current registration requirement, these temporary facilities will be required to notify the appropriate regional office, in writing, at least 30 calendar days prior to locating at the site. Also, a technical clarification has been made referencing the checklist requirement that is applicable to both permanent and temporary CBPs. General requirements concerning distance limits, emission limits, control requirements, and recordkeeping have not changed.

Copies of the standard permit for CBPs may be obtained from the TCEQ Web site at *http://www.tnrcc.state.tx.us/permitting/airperm/nsr_permits/athrize.htm#stdpmt* or by contacting the TCEQ, Office of Permitting, Remediation, and Registration, Air Permits Division at (512) 239-1240.

OVERVIEW OF AIR QUALITY STANDARD PERMIT AMENDMENTS

The commission is issuing amendments to the standard permit for CBPs under Texas Health and Safety Code, §382.05195 and 30 TAC Chapter 116, Subchapter F, Standard Permits. Facilities which are currently authorized under the concrete batch plant standard permit will not be required to re-register with the commission in order to use the new notification requirement. New facilities not authorized by the commission that want to locate on a public works site will first have to register in accordance with §116.611, Registration to Use a Standard Permit.

PUBLIC NOTICE AND COMMENT PERIOD

In accordance with §116.605, the TCEQ published notice of the proposed amended standard permit in the January 10, 2003 issue of the *Texas Register* (28 TexReg 500). The notice was also published in the newspapers of the largest general circulation in Austin, Houston, and Dallas on January 10, 2003. The comment period closed on February 13, 2003.

PUBLIC MEETING

A public meeting on the proposal was offered on February 13, 2003 at 10:00 a.m., at the Texas Commission on Environmental Quality. No one signed in to make oral comments or written comments and the meeting was canceled.

ANALYSIS OF COMMENTS

Written comments were received from the Harris County Public Health and Human Services Pollution Control Division (HCPC) and J.L. Steel, L.P (JLS).

HCPC commented that in addition to providing notification 30 days in advance to the appropriate TCEQ regional office, the owner/operator of a CBP relocating to a public works site should also give notification 30 days in advance to any local air pollution control agency having jurisdiction.

The commission agrees with the comment. Subsection (5)(E) of the standard permit has been changed to include a requirement to notify, "any local air pollution control agency having jurisdiction," no less than 30 days prior to locating on the site.

JLS supported the commission's intention to expedite the authorization process for concrete batch plants on public works projects.

The commission acknowledges the favorable comment.

TRD-200304431

Stephanie Bergeron

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: July 23, 2003

Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director (ED) of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 1, 2003**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should

be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 1, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Barry Beavers dba Thomas Brothers; DOCKET NUMBER: 2001-1484-PST- E; TCEQ ID NUMBER: 10719; LOCATION: 290 Walnut Street, Colorado City, Mitchell County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control for the three underground storage tanks (USTs); 30 TAC §334.10(b)(1)(B), by failing to maintain in a secure location and make available for review legible copies of all required records pertaining to the USTs; 30 TAC§334.51(b)(2)(A) - (C) and TWC, §26.3475, by failing to equip the fill pipe with a tight fitting adapter or similar device to provide a liquid tight seal during the transfer of regulated substances into the tank and failing to install spill containment and overflow prevention equipment for the UST system; 30 TAC §334.50(b)(1)(A) and (2), by failing to monitor piping in a manner designed to detect releases from any portion of the UST piping; 30 TAC §334.49(a) and TWC, §26.3475, by failing to install a corrosion protection system for the UST; 30 TAC §334.7(d)(3), by failing to update or change registration information within 30 days from the date on which the owner or operator first became aware of changes or status of the system; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of the USTs; and 30 TAC §334.47(a)(2), by failing to permanently remove any existing UST system that was not brought into timely compliance with upgrade requirements no later than 60 days after the prescribed implementation date; PENALTY: $15,500; STAFF ATTORNEY: Shannon Strong, Litigation Division, MC 175, (512) 239-6201; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(2) COMPANY: Claudio Barrera dba Barrera Backhoe Service; DOCKET NUMBER: 2001- 0179-OSI-E; TCEQ ID NUMBER: none; LOCATION: six miles west of the intersection of Highway 281 South and Farm-to-Market Road 735, Ben Bolt, Jim Wells County, Texas; TYPE OF FACILITY: on-site sewage facility (OSSF); RULES VIOLATED: 30 TAC §285.50(b) and (c), and Texas Health and Saftey Code (THSC), §366.071, by failing to have a valid registration with the TCEQ prior to commencing the installation, alteration, extension, or repair of an OSSF; and THSC, §366.051(c), by failing to obtain from the owner of the site proof of a permit and approved plan from the TCEQ prior to beginning the installation of the OSSF; PENALTY: $875; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Corpus Christi Regional Office, 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(3) COMPANY: Jeffrey Stuart dba J's Kwik Mart; DOCKET NUMBER: 2002-0993-PST-E; TCEQ ID NUMBER: 2350; LOCATION: 201 Avenue E, Ozona, Crockett County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(c)(4)(C) and TWC, §26.3475(d), by failing to inspect and test the USTs' corrosion protection system within three to six months after installation and once every three years thereafter; 30 TAC §334.49(c)(2)(C) and TWC, §26.3475(d), by failing to ensure that the rectifier and other system components were operating properly by inspecting the rectifier and components at least once every 60 days; 30 TAC §37.815(a) and (b), by failing to demonstrate financial assurance for taking corrective action and to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.50(a)(1) and (b)(1) and (2) and TWC, §26.3475(a) and (c)(1), by failing to have a release detection method capable of detecting a release from any portion of the UST system which contains regulated substances including the tanks, piping, and other ancillary equipment; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that the facility's delivery certificate was posted and visible at all times; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking was permanently applied upon or affixed to either the top of the fill tube or to a nonremovable point in the immediate area of the fill tube which corresponds to the UST identification number listed on the registration and self- certification form; PENALTY: $8,500; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R-12, (713) 422-8918; REGIONAL OFFICE: San Angelo Regional Office, 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (915) 655-9479.

(4) COMPANY: Lowery Petroleum, Inc. dba Sunshine Exxon and dba Laurel Park Texaco; DOCKET NUMBER: 2001-1244-PST-E; TCEQ ID NUMBERS: 5008 and 34552; LOCATIONS: 813 North 77 Sunshine Strip and 1110 South 77 Sunshine Strip, Harlingen, Cameron County, Texas; TYPE OF FACILITY: gasoline service station; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate the required financial responsibility for taking corrective action and to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; 30 TAC §334.10(b)(1)(A), by failing to develop and maintain all UST records; 30 TAC §334.49(c)(2) and TWC, §26.3475(d), by failing to operate and maintain the cathodic protection system to ensure that the rectifier and other system components are operating properly; 30 TAC §334.50(d)(2)(A) and TWC, §26.3475(c)(1), by failing to conduct weekly manual tank gauging for the petroleum substance tanks having a nominal capacity of 550 gallons or less when using it as the sole method of tank release detection; 30 TAC §334.8(c)(5)(C), by failing to permanently tag, label, or mark the UST system with an identification number that is identical to the UST identification number listed on the UST registration and self-certification form; 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to submit the required UST registration and self-certification form to the commission; 30 TAC §334.8(c)(5)(A)(iii), by failing to ensure that a valid, current TCEQ delivery certificate is posted at the facility; 30 TAC §334.22, by failing to pay all outstanding UST fees; 30 TAC §334.10(b)(1)(A), by failing to maintain all UST records; 30 TAC §334.49(a) and TWC, §26.3475(d), by failing to provide corrosion protection for the USTs associated with the UST system; 30 TAC §334.50(b)(2)(A)(ii)(III) and TWC, §26.3475(a), by failing to perform an annual performance test on the line leak detectors; 30 TAC §334.51(b)(2)(C) and TWC, §26.3475(a), by failing to equip each tank with overfill prevention equipment; and 30 TAC §334.8(c)(4)(B) and TWC, §26.346(a), by failing to complete a UST registration and self-certification form with all the applicable information requested on the agency's authorized form for all regulated UST systems; PENALTY: $67,200; STAFF ATTORNEY: Gitanjali Yadav, Litigation Division, MC 175, (512) 239-2029; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(5) COMPANY: Melvin K. Musick; DOCKET NUMBER: 2001-0471-OSI-E; TCEQ ID NUMBER: none; LOCATION: Route 1, Box 400, May, Brown County, Texas; TYPE OF FACILITY: on-site sewage; RULES VIOLATED: 30 TAC §285.61(4) and (5) and THSC, §366.051(c) and §366.054, by failing to obtain the necessary permitting authority's authorization and failing to notify the permitting authority before beginning to install, construct, alter, extend, or repair

an OSSF; 30 TAC §285.61(6) and §285.32(a), by failing to use proper materials in the installation and construction of the OSSF; 30 TAC §285.61(6) and §285.32(b)(1)(B) and (C)(ii), by failing to install tank and outlet flowlines of the proper capacity; and 30 TAC §§285.61(6), 285.32(a), and 285.33(b)(1)(E), by failing to install a two-way clean-out from the house to the tank and failing to utilize an approved material as a permeable soil barrier; PENALTY: $1,750; STAFF ATTORNEY: Darren Ream, Litigation Division, MC R-4, (817) 588-5878; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (915) 698-9674.

(6) COMPANY: Patriot Petroleum, Inc. dba Eastex Exxon; DOCKET NUMBER: 2002-0736- PST-E; TCEQ ID NUMBER: 26493; LOCATION: 3980 Eastex Freeway, Beaumont, Jefferson County, Texas; TYPE OF FACILITY: retail gasoline station; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to provide proper release detection for USTs containing more than one inch of petroleum products; 30 TAC §334.50(d)(2)(A) and TWC, §26.3475, by failing to conduct manual tank gauging as the release detection method for a petroleum substance tank having a nominal capacity of 1,000 gallons or less; 30 TAC §334.7(d)(3) and TWC, §26.346(a), by failing to provide amended registration for any change or additional information regarding USTs within 30 days from the date of the occurrence of the change or addition, or within 30 days of the date on which the owner or operator first became aware of the change or addition; and 30 TAC §37.815(a)(1) and (b)(1), by failing to demonstrate the required financial responsibility for taking corrective action and to compensate third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: $15,000; STAFF ATTORNEY: Alfred Okpohworho, Litigation Division, MC R- 12, (713) 422-8918; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200304417
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 22, 2003

Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section 7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **September 1, 2003**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on September 1, 2003**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Century Trucking, Inc.; DOCKET NUMBER: 2002-0629-MLM-E; TCEQ ID NUMBER: 455100033; LOCATION: west side of South Fawn Drive, approximately 1/2 mile from the intersection of Wheeler Road and South Fawn, Lumberton, Hardin County, Texas; TYPE OF FACILITY: dirt pit; RULES VIOLATED: 30 TAC §111.201 and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the rules of outdoor burning by burning tires and metal; and 30 TAC §330.5, by failing to properly dispose of solid waste; PENALTY: $3,750; STAFF ATTORNEY: Laurencia Fasoyiro, Litigation Division, MC R-12, (713) 422-8914; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703- 1892, (409) 898-3838.

(2) COMPANY: The Jackson Family Trust and William Wedge dba Cedar Creek Mobile Home Park; DOCKET NUMBER: 2001-1345-PWS-E; TCEQ ID NUMBER: 0610086; LOCATION: west side of Farm-to-Market (FM) Road 1281, 3.5 miles south of Interstate Highway (IH) 35E, Denton, Denton County, Texas; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.46(n)(2), by failing to provide an up-to-date map of the distribution system; 30 TAC §290.42(i), by failing to provide American National Standards/National Sanitation Foundation (ANS/NSF) chlorine; 30 TAC §290.46(m)(1)(A), by failing to conduct ground storage tank inspections; 30 TAC §290.46(m)(1)(B), by failing to conduct an annual pressure tank inspection; 30 TAC §290.46(i), by failing to provide a customer service agreement or plumbing ordinance; 30 TAC §290.41(c)(3)(A), by failing to provide well completion data; 30 TAC §290.43(c)(3) and (4), by failing to provide an overflow and water level indicator on the ground storage tank; 30 TAC §290.43(c)(1), by failing to provide a vent on the ground storage tank; 30 TAC §290.43(c), by failing to provide an American Water Works Association ground storage tank; 30 TAC §290.43(d)(7), by failing to provide a pressure tank that is tight against leakage; 30 TAC §290.43(d)(3), by failing to provide an air-to-water volume indicator on the 1,050 gallon pressure tank; 30 TAC §290.46(r), by failing to maintain a minimum of 35 pounds per square inch throughout the distribution system; 30 TAC §290.45(b)(1)(B)(i) and THSC, §341.0315(c), by failing to provide a minimum of 0.6 gallons per minute per connection well production capacity; 30 TAC §290.42(e)(7), by failing to seal the hypochlorinator container; and 30 TAC §290.41(c)(3)(J), by failing to provide a concrete sealing block in good repair about the well; PENALTY: $7,813; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2301 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(3) COMPANY: West Texas Gas, Inc.; DOCKET NUMBER: 2001-1557-PST-E; TCEQ ID NUMBER: none; LOCATION: 14655 Hollyhock, Gardendale, Ector County, Texas; TYPE OF FACILITY: gasoline distributing company; RULES VIOLATED: 30 TAC §334.5(b)(1)(A), by failing to confirm a valid, current delivery certificate issued by the TCEQ covering the underground storage tank (UST) system prior to depositing a regulated substance into the UST

system; PENALTY: $1,000; STAFF ATTORNEY: Diana Grawitch, Litigation Division, MC 175, (512) 239-0939; REGIONAL OFFICE: Midland Regional Office, 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (915) 570-1359.

TRD-200304416
Paul C. Sarahan
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 22, 2003

Notice of Water Quality Applications

The following notices were issued during the period of July 14, 2003 through July 22, 2003.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P O Box 13087, Austin Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

A. K. INTERESTS-HUNTERWOOD, L.P. has applied for a renewal of TPDES Permit No. 11066-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 120,000 gallons per day. The facility is located at 5830 South Lake Houston Parkway approximately 1.5 miles south/southeast of the intersection of Farm-to-Market Road 526 and U.S. Highway 90 and approximately 10.5 miles northeast of the Harris County courthouse in downtown Houston. in Harris County, Texas.

AQUAUTILITY CONSTRUCTION, LP has applied for a renewal of TPDES Permit No. 14253-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 450,000 gallons per day. The facility is located approximately 1,200 feet southwest of the intersection of County Road 405 and State Highway 288 in Brazoria County, Texas.

BC UTILITIES, INC. has applied for a renewal of TNRCC Permit No. 11145-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located 14400 Highway 59 North, Humble, Texas 77396 in Harris County, Texas.

THE CITY OF BELLEVUE has applied for a renewal of TPDES Permit No. 11235-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 21,000 gallons per day. The facility is located due north of Bellevue, approximately 900 feet east of Farm- to-Market Road 1288 and 0.3 miles north of the intersection of U.S. Highway 287 and Farm-to- Market Road 1288 in Clay County, Texas.

EDINBURG CONSOLIDATED INDEPENDENT SCHOOL DISTRICT has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. 14398-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 14,000 gallons per day via subsurface drip irrigation of 3.21 acres of public access pastureland. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site will be located approximately 1000 feet east of Farm-to-Market Road 2220 (Ware Road) and 0.5 mile south-southeast of the intersection of Farm-to-Market Road 1925 (Monte Cristo Road) and Farm-to-Market Road 2220 (Ware Road) in Hidalgo County, Texas.

THE FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 25 has applied for a renewal of TPDES Permit No. 12003-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility is located approximately 400 feet north of Old Richmond Road (Richmond-Gains Road) and approximately 2,900 feet east of Farm-to-Market Road 1464 in Fort Bend County, Texas.

FORT BEND COUNTY MUNICIPAL UTILITY DISTRICT NO. 41 has applied for a renewal of TPDES Permit No. 12475--001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 86,000 gallons per day. The facility is located approximately 1,500 feet northwest of the intersection of Voss Road and Old Richmond Road and approximatley 5,000 feet west-northwest of the intersection of State Highway 6 and Voss Road in Fort Bend County, Texas.

HAMSHIRE COMMUNITY WATER SUPPLY CORPORATION has applied for a renewal of TPDES Permit No. 12098-003, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 56,000 gallons per day. The facility is located approximately 0.6 mile north-northeast of Hamshire High School; 6,300 feet southeast of Interstate Highway 10 crossing of South Fork of Taylor Bayou; and 7,600 feet east-southeast of Interstate Highway 10 at West Hamshire Road in Jefferson County, Texas.

HARRIS COUNTY FRESH WATER SUPPLY DISTRICT NO. 61 has applied for a renewal of TNRCC Permit No. 10876-001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,600,000 gallons per day. The facility is located approximately 3,500 feet south of Cypress-North Houston Road and 3,000 feet east of Huffmeister Road in Harris County, Texas.

MONTGOMERY COUNTY MUNICIPAL UTILITY DISTRICT NO. 89 has applied for a renewal of TPDES Permit No. 13985-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 5,200 feet north of the intersection of Riley Fussell Road and Rayford Road in Montgomery County, Texas.

NORTH HAYS COUNTY UTILITY COMPANY has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Proposed Permit No. 14431-001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 486,000 gallons per day via subsurface drip irrigation of 118 acres of public access land. This permit will not authorize a discharge of pollutants into waters in the State. The disposal site will be located along the west side of County Road 131 (also known as Windy Hill Road) just east of Interstate Highway 35 in Hays County. Plants A and B will be located approximately 0.5 mile west of the intersection of Rolling Hill Road and County Road 131. Plant C will be located approximately 1 mile west of the intersection of Rolling Hill Road and County Road 131 in Hays County, Texas.

CITY OF OYSTER CREEK has applied for a renewal of TPDES Permit No. 11837-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility is located approximately 1.6 miles southeast of the intersection of State Highway 332 and Farm-to-Market Road 523, at the intersection of State Highway 332 and the U.S. Corps of Engineers Flood Control Levee on the west side of the levee in Brazoria County, Texas.

THE SPLENDORA INDEPENDENT SCHOOL DISTRICT has applied for a major amendment to TPDES Permit No. 11143-002 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 20,000 gallons per day to a daily average flow not to exceed 40,000 gallons per day. The facility

is located at 23411 Farm-to-Market Road 2090, on the west side of the earthen dam with the concrete spillway, approximately 3 miles northwest of the intersection of Interstate Highway 59 and Farm-to-Market Road 2090 in Montgomery County, Texas.

STAGECOACH PROPERTIES, INC. has applied for a renewal of TPDES Permit No. 10884- 001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located 200 feet west of Farm-to-Market Road 2268, 300 feet south of Salado Creek, and 400 feet southeast of the crossing of Salado Creek by the Interstate Highway 35 east frontage road, in the community of Salado in Bell County, Texas.

TRINITY @ WINDFERN, LLC has applied for a major amendment to TPDES Permit No. 13509-001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 28,000 gallons per day to a daily average flow not to exceed 40,000 gallons per day. The facility is located at 9401 Windfern Road approximately 300 feet south of Zaka Road and approximately 3.0 miles north of the intersection of Windfern Road and U.S. Highway 290 in Harris County, Texas.

2920 VENTURE, LTD. has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. 14421-001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 600,000 gallons per day. The facility is located about 4000 feet west and 1500 feet north of the intersection of Farm-to-Market Road 2920 and Boudreaux Road in Harris County, Texas.

CITY OF WINFIELD has applied for a renewal of TPDES Permit No. 12146-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 84,000 gallons per day. The facility is located approximately 400 feet north of Interstate Highway 30 access road and 1500 feet west of Farm-to-Market Road 1734 in the City of Winfield in Titus County, Texas.

THE WOODLOCH MOBILE HOME PARK (MHP), LLC has applied for a renewal of TPDES Permit No. 11673-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located approximately 0.75 miles south-southeast of the intersection of Hardy Road and Aldine Mail Road and approximately 1 mile north of the intersection of Hardy Road and Hopper Road in Harris County, Texas.

TRD-200304427
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 22, 2003

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on July 17, 2003, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v.Gerard Hungerford dba River Ranch Estates; SOAH Docket No. 582-03-0435; TCEQ Docket No. 2001-0651-PWS-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Gerard Hungerford dba River Ranch Estates on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas. This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Doug Kitts, Office of the Chief Clerk, (512) 239-3317.

TRD-200304426
LaDonna Castañuela
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 22, 2003

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Miller at (512) 463-5780 or (800) 325-8506.

Deadline: Personal Financial Statement due April 30, 2003

A.W. Davis, P.O. Drawer 36, Newton, Texas 75966-0036

Brian M. Boales, Bldg. #600 Ste. 600, 3175 Satellite Blvd., Duluth, Georgia 30096

Robert E. Parrish, 1315 Red Maple Dr., Carrollton, Texas 75007-1031

John M. Turner, 6009 Hillcrest, Dallas, Texas 75205

Robert Hawkins, Plumbers & Pipefitters Local #529, 1108 Lewis St., Bellmead, Texas 76705-2969

Anton E. Hackebeil, P.O. Box 220, Hondo, Texas 78861-0220

Ruben Espronceda, 243 Lorraine, San Antonio, Texas 78214

Carl R. McQueary, 500 E. Anderson Lane, Apt. 147, Austin, Texas 78752-1230

Valerie Freeman, 3311 Chaparral Dr., Dallas, Texas 75240

Micaela Alvarez, 6100 N. 28th St., McAllen, Texas 78504

Roy L. Stark, 408 E. Neches, Palestine, Texas 75801

Willard L. Jackson Jr., Metroplex Ind. Inc., 14425 Cornerstone Village Dr., Houston, Texas 77014

John P. Gable, 4849 Sun Valley, El Paso, Texas 79905

Randall H. Riley, 4000 Hambletonian Ct., Austin, Texas 78746

Tony G. Hedges, D.O., 104 East 21st St., Littlefield, Texas 79339

Jacqueline G. Humphrey, Hudgins/Humphrey, 1800 S. Washington St. #315, Amarillo, Texas 79102

William H. Bigelow, 502 Pinehaven, Houston, Texas 77024

Teri H. Mathis, 1010 Baker Rd., Rosenberg, Texas 77471

Barry D. Bedwell, 7502 Countryside, Amarillo, Texas 79119

Jim G. Bray Jr., 625 18th Street, Plano, Texas 75074

Benna Timperlake, 2001 Ocean Dr., Corpus Christi, Texas 78404-1868

Zena B. Pearcy, 615 Wilmes Dr., Austin, Texas 78752

Pamela M. Hodges, 414 Mountain Spring Dr., Boerne, Texas 78006

Bernie Francis, 2343 Highlands Creek Road, Carrollton, Texas 75007

Theresa M. Baer, 5904 Mountainclimb Dr., Austin, Texas 78731

Byron E. Miller, 1149 E. Commerce, Ste. 205, San Antonio, Texas 78205

Ruben E. Salinas, 1106 Hill Place Dr., Laredo, Texas 78045

Don B. Jones, 2000 Gulf Ave., Midland, Texas 79705

Connie L. Hughes, Rt. 1, Box 172, Idalou, Texas 79329

Joseph Muniz, 526 Lake Dr., Harlingen, Texas 78550

Marvellette C. Fentress Hunter, 1102 Pinemont Dr., Ste. B, Houston, Texas 77018

Ricardo, G. Cigarroa, M.D., 203 Sunset, Laredo, Texas 78041

Terdema L. Ussery II, 5100 Pinehurst, Frisco, Texas 75034

Mario H. Salinas, 2700 Kings Dr., Edinburg, Texas 78539

Linda M. Siy, JPS Health Center Northeast, 837 Brown Trail, Bedford, Texas 76022

Richard Ramirez, Goldman Sachs, 1100 Louisiana, Ste. 1100, Houston, Texas 77002

Paul J. Calapa, 294 Creekbend Dr, Brownsville, Texas 78521-4330

Vincent Cruz Jr., 611 9th St., Fort Worth, Texas 76104

Gerald E. Wilson, 15915 Katy Freeway, Ste. 500, Houston, Texas 77094

Raymond T. Meza, P.O. Box 2240, San Angelo, Texas 76902

Jay Pack, 4330 Armstrong Pkwy, Dallas, Texas 75205

Carl Ray Polk Jr., Rte. 10, Box 9645, Lufkin, Texas 75904

George M. Williams, Williams Partners, Inc., 12 Greenway Plaza, Ste. 1100, Houston, Texas 77046

Charles M. Rutledge, 3033 Cain Rd., College Station, Texas 77845

Patrick L. Brockett, University of Texas, Dept. MSIS, CBA 5.202, Austin, Texas 78712-1175

J. Paul Johnson, 4115 Shadow Haven Drive, Fresno, Texas 77545-7534

Ann Horn, 11425 Midbury Court, Austin, Texas 78748

Kenneth A. James, 1914 Riverglen Forest, Kingwood, Texas 77345

Linda Diane Steinbrueck, 1401 Darden Hill Rd., Driftwood, Texas 78619

Dan Gattis, P.O. Box 2856, Georgetown, Texas 78627

Martin Basaldua, P.O. Box 6752, Kingwood, Texas 77324

Frank J. Pagel, P.O. Drawer G, Tivoli, Texas 77990

Basilio R. Jimenez, 303 W. Division, Edna, Texas 77957

Troy Simmons, 503 North 6th, Longview, Texas 75601

Ralph David Kelly, 5485 Belt Line Road, Suite 300, Dallas, Texas 75254

Angela S. Myres, 11410 Wolfs Landing, Fairfax Station, Virginia 22039-2040

Clement Moreno, 20412 Haystack Cove, Spicewood, Texas 78669

Douglas N. Scott, 3404 High Vista Dr., Carrollton, Texas 75007

Thomas J. Ruiz, 404 Amalia Dr., Horizon City, Texas 79928

Charles J. Henry, 5622 Palisade Falls Tr., Kingwood, Texas 77345

Frank Acosta, 5421 Knoll Terrace, Kingwood, Texas 77339

Nora Cox Taylor, 15835 Foothill Farms Loop #1024, Pflugerville, Texas 78660

John H. Hofmann, P.O. Box 3505, San Angelo, Texas 76902

Kyriacos Zygourakis, Rice University, Dept of Chemical Eng, P.O. Box 1892, Houston, Texas 77251-1892

Peter Chukwuemeka Okose M.D., 1007 Cowards Creek Dr., Friendswood, Texas 77546-4409

Janice B. Howard, 8542 Hidden Hollow Ct., Missouri City, Texas 77459

Peggy N. Troy, LeBonheur Children's Hospital, 50 N. Dunlap, Memphis, Tennessee 38103

Sandra Gunter Holland, 529 Oakhaven Dr., Pleasanton, Texas 78064

Steve Cronin, P.O. Box 205, Shepherd, Texas 77371

Hector Farias, 705 S. Texas Blvd., Weslaco, Texas 78596

Bryan K. Brown, 2911 Lacewood Ct., Pearland, Texas 77584

Pauline E. Higgins, JP Morgan Chase & Co., 712 Main St., 26th Fl., Houston, Texas 77002-3223

Antoinette Fontenot-Humphrey, 6905 Thistle Hill Way, Austin, Texas 78754

Cliff Mountain, 2909 Meandering River, Austin, Texas 78746

TRD-200304343
Karen Lundquist
Executive Director
Texas Ethics commission
Filed: July 17, 2003

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Texas Department of Health

Correction of Error

In the May 2, 2003, issue of the *Texas Register,* the Texas Department of Health adopted amendments to 25 TAC Chapter 40, Subchapter B, §§40.101-40.103, 40.105 and 40.106. Due to a *Texas Register* editing error, the first sentence of §40.105 on page 3728 is incorrect. The text of §40.105 should read:

§40.105. Program Limitations.

Recipients are not eligible to receive medical transportation services under the following circumstances:

(1) . . . .

TRD-200304437

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Notice of Agreed Order with URI, Inc.

On July 3, 2003, the director of the Bureau of Radiation Control (bureau), Texas Department of Health, signed the Agreed Order between the bureau and URI, Inc. (licensee-L03653) of Kingsville. The Agreed Order of March 8, 2002, is extended to October 6, 2003, at which time the bureau will review the matter and determine whether to further extend the Agreed Order.

A copy of all relevant material is available, by appointment, for public inspection Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays). Contact Chrissie Toungate, Custodian of Records, Bureau of Radiation Control, Texas Department of Health, 1100 West 49th Street, Austin,

Texas 78756-3189, by calling (512) 834-6688, or by visiting the Exchange Building, 8407 Wall Street, Austin, Texas.

TRD-200304354
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 18, 2003

Notice of Emergency Cease and Desist Order on Texas Foot Consultants

Notice is hereby given that the Bureau of Radiation Control (bureau) ordered Texas Foot Consultants (registrant-R26964) of Houston to cease and desist performing Foot (DP) x-ray procedures with the X-Cel x-ray unit (Model Number MB-700; Serial Number 6222619), which is located at the registrant's Angleton facility, until the exposures at skin entrance are within regulatory limits. The order will remain in effect until the bureau authorizes the registrant to perform the procedure.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200304361
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 21, 2003

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Rafael Flores, Jr.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Rafael Flores, Jr. (Radiographer Identification Number 001052; Card Audit Number 13048) of Highlands. A total penalty of $1,000 is proposed to be assessed the radiographer for alleged violations of 25 Texas Administrative Code, §289.255.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200304360
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 21, 2003

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Texas Tech University Health Sciences Center

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Texas Tech University Health Sciences Center (registrant-M00630) of Lubbock. A total penalty of $15,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, §289.230.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200304363
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 21, 2003

Notice of Preliminary Report for Assessment of Administrative Penalties and Notice of Violation to Weslaco Radiology Center, Inc.

Notice is hereby given that the Bureau of Radiation Control (bureau), Texas Department of Health (department), issued a notice of violation and proposal to assess an administrative penalty to Weslaco Radiology Center, Inc. (registrant-M00290) of Edinburg. A total penalty of $10,000 is proposed to be assessed the registrant for alleged violations of 25 Texas Administrative Code, §289.230.

A copy of all relevant material is available, by appointment, for public inspection at the Bureau of Radiation Control, Texas Department of Health, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200304362
Susan K. Steeg
General Counsel
Texas Department of Health
Filed: July 21, 2003

Texas Health and Human Services Commission

Notice of Hearing on Proposed Medicaid Provider Payment Rates

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2003, to receive public comment on proposed payment rates for the Nursing Facility program operated by the Texas Department of Human Services (DHS). These payment rates are proposed to be effective September 1, 2003. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires a public hearing on proposed payment rates. The public hearing will be held on August 18, 2003, at 1:00 p.m. in the Public Hearing Room (First Floor, Building III) of the Riata Building at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104. Interested parties may request to have mailed to them or may pick up a briefing package concerning the

proposed payment rates by contacting Tony Arreola at (512) 685-3124 or at HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Arreola, by August 8, 2003, so that appropriate arrangements can be made.

Proposal. As single state agency for the state Medicaid program, HHSC proposes new per diem payment rates for the nursing facility program operated by DHS. These proposed rates are based on the rates in effect for state fiscal year 2003, less a 3.5 percent reduction consistent with appropriations for state fiscal years 2004 and 2005; and House Bill 2292, 78th Legislature, which directs HHSC to provide a program offering incentives for increasing direct care staff and direct care wages and benefits if funds are available and directs HHSC to modify the rules governing the "incentives program." These payments are also proposed pursuant to §32.028(h) of the Human Resources Code which directs HHSC to ensure that the "rates paid for nursing home services provide for the rate component derived from reported liability insurance costs to be paid only to those homes that purchase liability insurance acceptable to the commission." To comply with this provision, the portion of the general and administrative rate component derived from reported liability insurance costs has been excluded from the rates in the chart below. The liability insurance rate component is $1.13 per diem. The funds from the liability insurance rate component excluded from these rates will be distributed to facilities that verify liability insurance coverage acceptable to HHSC.

Payment rates are proposed to be effective September 1, 2003, for the state fiscal years 2004 and 2005, as follows:

Rates by TILE (Texas Index for Level of Effort) class:

TILE	TILE base rate
201	$144.31
202	$128.81
203	$121.91
204	$102.03
205	$94.79
206	$95.86
207	$87.13
208	$84.19
209	$78.58
210	$68.55
211	$66.08
212 (default)	$66.08
Supplemental Payments:	
Ventilator--Continuous	$78.22
Ventilator--Less than Continuous	$31.29
Pediatric Tracheostomy	$46.23

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 TAC, Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.307 (relating to Reimbursement Setting Methodology), §355.308 (relating to Enhanced Direct Care Staff Rate), and in accordance with proposed revisions to be codified in these sections. These rates were subsequently adjusted in accordance with 1 TAC 355, Subchapter A (relating to Cost Determination Process), §355.101 and §355.109.

Participating facilities requesting to staff above the minimum staffing requirements included in the rates in the above chart may receive one of

the following payment rates per day in addition to the above payment rates (within available funds):

Minutes Associated with Proposed Rate	Proposed Rate Per Diem
1 LVN Minute = 1.88 Aide Minutes = 0.68 RN Minutes	$0.29
2 LVN Minutes = 3.75 Aide Minutes = 1.36 RN Minutes	$0.58
3 LVN Minutes = 5.63 Aide Minutes = 2.05 RN Minutes	$0.87
4 LVN Minutes = 7.50 Aide Minutes = 2.73 RN Minutes	$1.16
5 LVN Minutes = 9.38 Aide Minutes = 3.41 RN Minutes	$1.45
6 LVN Minutes = 11.25 Aide Minutes = 4.09 RN Minutes	$1.74
7 LVN Minutes = 13.13 Aide Minutes = 4.77 RN Minutes	$2.03
8 LVN Minutes = 15.00 Aide Minutes = 5.45 RN Minutes	$2.32
9 LVN Minutes = 16.88 Aide Minutes = 6.14 RN Minutes	$2.61
10 LVN Minutes = 18.75 Aide Minutes = 6.82 RN Minutes	$2.90
11 LVN Minutes = 20.63 Aide Minutes = 7.50 RN Minutes	$3.19
12 LVN Minutes = 22.50 Aide Minutes = 8.18 RN Minutes	$3.48
13 LVN Minutes = 24.38 Aide Minutes = 8.86 RN Minutes	$3.77
14 LVN Minutes = 26.25 Aide Minutes = 9.55 RN Minutes	$4.06
15 LVN Minutes = 28.13 Aide Minutes = 10.23 RN Minutes	$4.35
16 LVN Minutes = 30.00 Aide Minutes = 10.91 RN Minutes	$4.64
17 LVN Minutes = 31.88 Aide Minutes = 11.59 RN Minutes	$4.93
18 LVN Minutes = 33.75 Aide Minutes = 12.27 RN Minutes	$5.22
19 LVN Minutes = 35.63 Aide Minutes = 12.95 RN Minutes	$5.51
20 LVN Minutes = 37.50 Aide Minutes = 13.64 RN Minutes	$5.80
21 LVN Minutes = 39.38 Aide Minutes = 14.32 RN Minutes	$6.09
22 LVN Minutes = 41.25 Aide Minutes = 15.00 RN Minutes	$6.38
23 LVN Minutes = 43.13 Aide Minutes = 15.68 RN Minutes	$6.67
24 LVN Minutes = 45.00 Aide Minutes = 16.36 RN Minutes	$6.96
25 LVN Minutes = 46.88 Aide Minutes = 17.05 RN Minutes	$7.25
26 LVN Minutes = 48.75 Aide Minutes = 17.73 RN Minutes	$7.54
27 LVN Minutes = 50.63 Aide Minutes = 18.41 RN Minutes	$7.83

Additional levels will be made available on an as needed basis within appropriated funds.

Methodology and justification. The proposed rates in the chart above were determined in accordance with the rate setting methodology at 1 TAC, Chapter 355, Subchapter C (relating to Reimbursement Methodology for Nursing Facilities), §355.308 (relating to Enhanced Direct Care Staff Rate), and in accordance with proposed revisions to be codified in this section. These rates were subsequently adjusted in accordance with 1 TAC 355, Subchapter A (relating to Cost Determination Process), §355.101 and §355.109. Issued in Austin, Texas, on July 22, 2003.

TRD-200304412
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 22, 2003

Notice of Proposed Nursing Facility Payment Rate for the Pediatric Care Facility Special Reimbursement Class

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing to receive public comment on a proposed facility-specific payment rate for the Truman W. Smith Children's Care Center, a nursing facility that is a member of the pediatric care facility special reimbursement class. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g), which requires public hearings on proposed payment rates for medical assistance programs. The public hearing will be held on August 18, 2003, at 1:00 p.m. in the Public Hearing Room (First Floor, Building III) of the Riata Building at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola at (512) 685-3124 or at HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Arreola, by August 8, 2003, so that appropriate arrangements can be made.

Proposal. HHSC proposes a per-day payment rate for the nursing facility pediatric care facility special rate class for Truman W. Smith Children's Care Center in the amount of $158.34. This payment rate is proposed to be effective September 1, 2003.

Methodology and justification. The proposed rate was determined in accordance with the proposed rate setting methodology for the nursing facility pediatric care facility special rate class at 1 TAC, Chapter 355, Subchapter C (relating to Reimbursement Setting Methodology for Nursing Facilities), §355.307(c). This rate was subsequently adjusted in accordance with 1 TAC 355, Subchapter A (relating to Cost Determination Process), §355.101 and §355.109.

TRD-200304410
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 22, 2003

Notice of Public Hearing

A rate hearing on Reimbursement for Service Coordination for Persons with Chronic Mental Illness (MH Service Coordination) and Reimbursement for Service Coordination for Persons with Mental Retardation or a Related Condition or Pervasive Developmental Disability (MR Service Coordination) will be held on August 18, 2003, at 2:00 p.m. in the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III Located at 12555 Riata Vista Circle, Austin Texas 78727.

Written comments may be submitted to the Health and Human Services Commission Medicaid Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756 or faxed to (512) 685-3104. Hand deliveries will be accepted at Riata Building III, 1st floor, Mail Code H-400, 12555 Riata Vista Circle, Austin, Texas 78727. Comments must be received by 5:00 p.m. on August 18, 2003. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Reimbursement and Analysis Section at (512) 685-3124.

Persons requiring ADA accommodation should contact Tony Arreola by calling (512) 685-3124, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tony Arreola through the Texas Relay Operator by calling 1-800-735-2988.

Reimbursement for Service Coordination for Persons with Chronic Mental Illness (MH Service Coordination)

The commission proposes that the following reimbursement per case amount will be effective September 1, 2003.

	Current Rate	Proposed Rate
Mental Health Child Unit of Service: Case Rate	$142.17	$137.19
Mental Health Adult Unit of Service: Case Rate	$112.53	$108.59

Reimbursement for Service Coordination for Persons with Mental Retardation or a Related Condition or Pervasive Developmental Disability (MR Service Coordination)

The commission proposes that the following reimbursement per case amount will be effective September 1, 2003.

Mental Retardation

Unit of Service: Case Rate

Current Rate: $177.36

Proposed Rate: $171.15

The proposed rates are determined in accordance with 1 T.A.C. §355.706(c) relating to adjustments to reimbursement rates when federal or state funding is changed in ways that affect the available funding for programs.

TRD-200304344
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

A rate hearing on Reimbursement for Service Coordination for Persons with Chronic Mental Illness (MH Service Coordination) and Reimbursement for Service Coordination for Persons with Mental Retardation or a Related Condition or Pervasive Developmental Disability (MR Service Coordination) will be held on August 18, 2003, at 2:00 p.m. in the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III Located at 12555 Riata Vista Circle. Austin Texas 78727.

Written comments may be submitted to the Health and Human Services Commission Medicaid Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756 or faxed to (512) 685-3104. Hand deliveries will be accepted at Riata Building III, 1st floor, Mail Code H-400, 12555 Riata Vista Circle, Austin, Texas 78727. Comments must be received by 5:00 p.m. on August 18, 2003. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Reimbursement and Analysis Section at (512) 685-3124.

Persons requiring ADA accommodation should contact Tony Arreola by calling (512) 685-3124, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tony Arreola through the Texas Relay Operator by calling 1-800-735-2988.

Reimbursement for Service Coordination for Persons with Chronic Mental Illness (MH Service Coordination)

The commission proposes that the following reimbursement per case amount will be effective September 1, 2003.

	Current Rate	Proposed Rate
Mental Health Child Unit of Service: Case Rate	$142.17	$137.19
Mental Health Adult Unit of Service: Case Rate	$112.53	$108.59

Reimbursement for Service Coordination for Persons with Mental Retardation or a Related Condition or Pervasive Developmental Disability (MR Service Coordination)

The commission proposes that the following reimbursement per case amount will be effective September 1, 2003.

Mental Retardation

Unit of Service: Case Rate

Current Rate: $177.36

Proposed Rate: $171.15

The proposed rates are determined in accordance with 1 TAC §355.706(c) relating to adjustments to reimbursement rates when federal or state funding is changed in ways that affect the available funding for programs.

TRD-200304345
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

A rate hearing on Reimbursement for Institutions for Mental Diseases (IMD) will be held on Monday, August 18, 2003 at 4:45 p.m. in the Public Hearing Conference Room of the Riata Building III, 1st Floor. Enter the building at 12545 Riata Vista Circle, Austin, TX 78727 and obtain a pass from Security for the Public Hearing Conference Room.

Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. on August 18, 2003. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building, 12555 Riata Vista Circle, Austin, Texas 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Mr. Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101, telephone number (512) 685-3124, by August 15, 2003, so that appropriate arrangements can be made.

Reimbursement for Institutions for Mental Diseases (IMD)

The commission proposes that the following reimbursement amounts will be effective September 1, 2003 through August 31, 2004:

$406.34 per day

The proposed rates were determined in compliance with the rate setting methodology codified at 1 TAC Chapter 355, Subchapater F, §355.761

TRD-200304346
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

Payment rates for the state operated small facilities is proposed as follows:

Small Facilities

Current Rate: $205.99

Proposed Rate: $191.84

The proposed rates are determined in accordance with 1 TAC §355.706(c) relating to adjustments to reimbursement rates when federal or state funding is changed in ways that affect the available funding for programs.

A rate hearing will be held on August 18, 2003, at 4:00 p.m. in the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III Located at 12555 Riata Vista Circle, Austin Texas 78727.

Written comments may be submitted to the Health and Human Services Commission Medicaid Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756 or faxed to (512) 685-3104. Hand deliveries will be accepted at Riata Building III, 1st floor, Mail Code H-400, 12555 Riata Vista Circle, Austin, Texas 78727. Comments must be received by 5:00 p.m. on August 18, 2003. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Reimbursement and Analysis Section at (512) 685-3124.

Persons requiring ADA accommodations should contact Tony Arreola by calling (512) 685-3124, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tony Arreola through the Texas Relay Operator by calling 1-800-735-2988.

TRD-200304347
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

Reimbursement Rates for Non-state Operated Intermediate Care Facilities for persons with Mental Retardation ((ICF/MR).

The Health and Human Services Commission will conduct a public hearing to receive comment on the new reimbursement rates for Non-state Operated Intermediate Care Facilities for persons with Mental Retardation (ICF/MR). The rates will be effective September 1, 2003. The hearing will be held in compliance with Title 1, Texas Administrative Code, Chapter 355, Subchapter F, §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs. Payment rates are proposed to be effective September 1, 2003, as follows:

Chart
For Non-State Operated ICF/MRs:

House size	Level of Need	Current Rates	Proposed Rates
Small	Intermittent	$138.55	$134.42
Small	Limited	$154.49	$149.87
Small	Extensive	$176.51	$171.23
Small	Pervasive	$216.49	$210.02
Small	Pervasive +	$381.10	$369.72
Medium	Intermittent	$116.31	$112.83
Medium	Limited	$128.02	$124.20
Medium	Extensive	$149.26	$144.80
Medium	Pervasive	$180.86	$175.46
Medium	Pervasive +	$357.33	$346.66
Large	Intermittent	$90.36	$87.66
Large	Limited	$102.20	$99.15
Large	Extensive	$114.46	$111.03
Large	Pervasive	$159.43	$154.67
Large	Pervasive +	$352.71	$342.17

Methodology and justification: The proposed rates were determined in accordance with the rate setting methodology codified as 1 Texas Administrative Code Chapter 355, Subchapter F relating to Reimbursement Methodology for all medical assistance programs (ICF/MRs), §355.706.

The public hearing will be held on August 18, 2003, at 3:00 p.m. in the Public Hearing Room, Floor 1, Riata Building 3, 12555 Riata Vista Circle, Austin, Texas 78756.

Written comments may be submitted to HHSC Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756, or faxed to (512) 685-3104. Hand deliveries will be accepted at Riata Building 3, 12555 Riata Vista Circle, Austin, Texas 78727. Comments must be received by 5:00 p.m. on Monday, August 18, 2003.

Persons requiring an interpreter for deaf or hearing impaired or other accommodation should contact Tony Arreola by calling (512) 685-3124 or the TDY phone number of Texas Relay, which is 1-800-735-2988, at least 72 hours prior to the hearing.

TRD-200304348

Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

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Notice of Public Hearing

A rate hearing on Reimbursement for Home & Community-Based Services (HCS) will be held on August 18, 2003 at 2:30 p.m. in the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III located at 12555 Riata Vista Circle, Austin, Texas 78727.

RECOMMENDED ACTION

The commission proposes that the following reimbursement amounts per service for the HCS program become effective September 1, 2003, as follows:

Home & Community-Based Services

The rates are proposed as follows (note: all rates are "per day" unless otherwise specified):

	Overall	Intermittent	Limited	Extensive	Pervasive	Pervasive +
Day Habilitation						
Current	n/a	$15.35	$19.18	$25.58	$38.66	$153.46
Proposed	n/a	$15.01	$18.76	$25.02	$37.81	$150.08
Residential Assistance						
Residential Support						
Current	n/a	$81.08	$88.96	$100.24	$119.40	$194.06
Proposed	n/a	$79.30	$87.00	$98.03	$116.77	$189.79
Supervised Living						
Current	n/a	$81.08	$88.96	$100.24	$119.40	$194.06
Proposed	n/a	$79.30	$87.00	$98.03	$116.77	$189.79
Foster/Companion Care						
Current	n/a	$44.02	$47.42	$64.47	$88.33	$115.60
Proposed	n/a	$43.05	$46.38	$63.05	$86.39	$113.06

	Current	Proposed
Supported Home Living	$15.66	$15.32 per hour
Counseling and Therapies		
Respite Care	$8.81	$8.62 per hour
Supported Employment	$21.39	$20.92 per hour
Psychology	$69.68	$68.15 per hour
PT/OT/Speech/Audiology	$69.77	$68.24 per hour
Social Work	$51.29	$50.16 per hour
Dietary	$48.90	$47.82 per hour
Nursing	$57.91	$56.64 per hour
Case Management	$1,139.72	$1,114.65 per month

Methodology and justification

The proposed rates were determined in compliance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, Subchapter F, §355.706.

TRD-200304349
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

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Notice of Public Hearing

Texas Department of Mental Health and Mental Retardation (TDMHMR), Non-state Operated Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR)

Proposal. As single state agency for the state Medicaid program, the Health and Human Services Commission (HHSC) proposes new rates for the Non-state Operated ICF/MR program operated by the TDMHMR. Payment rates effective for September 1, 2003 are proposed as follows:

Chart
For Non-State Operated ICF/MRs:

House size	Level of Need	Current Rates	Proposed Rates
Small	Intermittent	$138.55	$134.42
Small	Limited	$154.49	$149.87
Small	Extensive	$176.51	$171.23
Small	Pervasive	$216.49	$210.02
Small	Pervasive +	$381.10	$369.72
Medium	Intermittent	$116.31	$112.83
Medium	Limited	$128.02	$124.20
Medium	Extensive	$149.26	$144.80
Medium	Pervasive	$180.86	$175.46
Medium	Pervasive +	$357.33	$346.66
Large	Intermittent	$90.36	$87.66
Large	Limited	$102.20	$99.15
Large	Extensive	$114.46	$111.03
Large	Pervasive	$159.43	$154.67
Large	Pervasive +	$352.71	$342.17

Public Hearing: A public hearing will be held on Monday, August 18, 2003 at 3:00 p.m., in compliance with Title I, Texas Administrative Code, Chapter 355, Subchapter F §355.702(h), which requires a public hearing on proposed reimbursement rates for medical assistance programs. The hearing will be at the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III located at 12555 Riata Vista Circle, Austin, Texas 78727.

Methodology and justification: The proposed rates were determined in compliance with the rate setting methodology codified at 1 Texas Administrative Code Chapter 355, Subchapter F, §355.706.

TRD-200304350
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

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Notice of Public Hearing

A rate hearing on Reimbursement for Medicaid Rehabilitative Services will be held on August 18, 2003 at 3:30 p.m. in the Public Hearing Room of the Texas Health and Human Services Commission Riata Building III located at 12555 Riata Vista Circle, Austin, Texas 78727.

Written comments may be submitted to the Texas Health and Human Services Commission Medicaid Rate Analysis, Mail Code H-400, 1100 West 49th Street, Austin, Texas 78756 or faxed to (512) 685-3104. Hand deliveries will be accepted at Riata Building III, 1st Floor, Mail Code H-400, 12555 Riata Vista Circle, Austin, Texas 78727. Comments must be received by 5:00 p.m. August 18, 2003. Interested parties may obtain a copy of the reimbursement-briefing package by calling the Rate Analysis Section at (512) 685-3124.

Persons requiring ADA accommodation should contact Tony Arreola by calling (512) 685-3124, at least 72 hours prior to the hearing. Persons requiring an interpreter for the deaf or hearing impaired should contact Tony Arreola through the Texas Relay Operator by calling 1-800-735-2988.

The Commission proposes that the following reimbursement amounts will remain effective beginning September 1, 2003, as follows:

Reimbursement for Medicaid Rehabilitative Services

	Current	Proposed
Community Support Services (Children and Adult) unit of service: up to 30 minutes		
Individual		
Paraprofessional	$25.10	$24.22
Professional	$34.56	$33.35
Small Group		
Paraprofessional	$6.54	$6.31
Professional	$9.49	$9.16
Adult and Children Day Program for Acute Needs unit of service: 1 hour	$20.87	$20.14
Adult Day Program for Skills Training unit of service: 1 hour	$11.89	$11.47
Adult Day Program for Skills Maintenance unit of service: 1 hour	$12.43	$11.99
Children Program for Skills Training unit of service: 1 hour	$24.17	$23.32
Plan of Care Oversight unit of service: per contact	$35.36	$34.12

The proposed rates were determined in compliance with 1 T.A.C. Chapter 355, Subchapter F, §355.706.

TRD-200304351
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 14, 2003, to receive public comment on proposed payment rates for the period of September 1, 2003, through August 31, 2004, for the School Health and Related Services (SHARS) program. The public hearing will be held on August 14, 2003, at 2:30 p.m. in the HHSC Public Hearing Room, in Riata Building III, at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding the proposed payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Nancy Kimble, HHSC Rate Analysis, Mail Code H-410, 1100 West 49th Street, Austin, Texas 78756-3101. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Ms. Kimble, HHSC Rate Analysis, Mail Code H-410, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Ms. Kimble at (512) 338-6544. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Ms. Kimble (telephone: 512-338-6496; FAX: 512-338-6544; or E-mail: nancy.kimble@hhsc.state.tx.us) on or after August 1, 2003.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Kimble, by August 12, 2003, so that appropriate arrangements can be made.

TRD-200304352
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2003, to receive public comment on proposed adjustments to Medicaid payment rates for most providers of acute care services, including rates for facilities providing inpatient and outpatient services, and rates for physicians and other medical practitioners. Proposed rates for acute care services are based on rates in effect for state fiscal year 2003, less a five percent reduction consistent with appropriations for the state fiscal year 2004-2005 biennium. The reduction will also apply to hospitals participating in selective contracting. The proposed rates are scheduled to be effective September 1, 2003. The public hearing will be held on August 18, 2003, from 9:00 a.m. to 10:30 a.m., in the HHSC Public Hearing Room at Riata Building III, 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata

Vista Circle. Written comments regarding the payment rate reductions may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Nancy Kimble, HHSC Rate Analysis, Mail Code H-410, 1100 West 49th Street, Austin, Texas 78756-3101. Overnight or special delivery mail may be sent, or written comments may be hand delivered, to Ms. Kimble, HHSC Rate Analysis, Mail Code H-410, Riata Building III, 12555 Riata Vista Circle, Austin, Texas 78727-6404. Alternatively, written comments may be sent via facsimile to Ms. Kimble at (512) 338-6544. Interested parties may request additional information concerning the payment rate reductions by contacting Ms. Kimble (telephone: 512-338-6496; FAX: 512-338-6544; or E-mail: nancy.kimble@hhsc.state.tx.us.).

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Ms. Kimble, by August 8, 2003, so that appropriate arrangements can be made.

TRD-200304353
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 18, 2003

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Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2003, to receive public comment on proposed payment rates for the following Medicaid and non-Medicaid programs: Community Based Alternatives - Home and Community Support Services and Assisted Living/Residential Care; Community Living Assistance and Support Services; Consolidated Waiver Program; Consumer-Managed Personal Assistance Services - Consumer Directed Services; Day Activity and Health Services; Deaf-Blind With Multiple Disabilities Waiver; Medically Dependent Children Program; Primary Home Care/Family Care; and Residential Care. The Texas Department of Human Services operates these programs. These payment rates are proposed to be effective September 1, 2003. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g) and Title 40 TAC §20.105(g), which require public hearings on proposed payment rates. The public hearing will be held on August 18, 2003, at 10:30 a.m. in the Public Hearing Room (First Floor, Building III) of the Riata Building at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola at (512) 685-3124 or at HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Arreola, by August 8, 2003, so that appropriate arrangements can be made.

TRD-200304411
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 22, 2003

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Public Notice

The Health and Human Services Commission (HHSC) announces its intent to submit to the Centers for Medicare and Medicaid Services TN 03-08, Amendment 643 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act, effective April 1, 2003. This proposed amendment deletes cost sharing that was approved in Amendment 634. The cost-sharing process described in Amendment 634 was enjoined by a state district court in Travis County on December 16, 2002, the first business day following the effective date of Amendment 634. HHSC, therefore, has not implemented the cost sharing established under the amendment or generated the program cost savings that were anticipated from its successful implementation. In addition, the Texas Legislature is currently considering legislation that would codify certain Medicaid cost-sharing requirements. The attached amendment is proposed in order to accommodate new public policy as prescribed by the 78th Texas Legislature and to enable HHSC to consider all potential cost savings initiatives. The proposed amendment is not expected to result in an increase in federal or state matching funds.

To obtain copies of the proposed amendment, interested parties may contact Winnie Rutledge, by mail at Health and Human Services Commission, 1100 W. 49th Street, H-200, Austin, Texas 78756-3199 or by telephone (512) 338-6967.

TRD-200304382
Steve Aragón
General Counsel
Texas Health and Human Services Commission
Filed: July 21, 2003

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Texas Higher Education Coordinating Board

Request for Offers for Consulting Services

The Texas Higher Education Coordinating Board (hereinafter referred to as THECB) is soliciting offers from organizations (hereinafter referred to as Consultant) for consulting services to advise THECB on the Texas Association of Developing Colleges (hereinafter referred to as TADC) Centers for Teacher Education. The ultimate objectives of this Request for Offers (hereinafter referred to as RFO) are to 1) facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; 2) work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; 3) facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and 4) report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements, and other evaluative measures.

This Request for Offer is being made pursuant to authority granted under Texas Government Code, Chapter 2254, subchapter B, section 2254.026 (relating to contracts with private consultants).

GENERAL BACKGROUND: The Texas Legislature established the Centers for Teacher Education Program during the 74th legislative session. The Texas Higher Education Coordinating Board was given the assignment of managing the program and has provided trusteed funds to support the programs at several historically Black Colleges. These institutions collectively form the Texas Association of Developing Colleges (TADC) and include Jarvis Christian College in Hawkins, Paul Quinn College in Dallas, Texas College in Tyler, Huston-Tillotson College in Austin, and Wiley College in Marshall. These colleges are private, general academic, minority-serving institutions and the funds appropriated are used for the purpose of supporting their centers for teacher education. The purpose of the Centers for Teacher Education at the participating colleges is to 1) recruit, train and place qualified minorities in the teaching profession; 2) integrate technology into the colleges' teacher preparation programs; and 3) provide or participate in at least one course per semester via distance education technologies. THECB retains a small percentage of the appropriations made for the teacher education centers for the costs of on-site monitoring and distribution of funds and, uses a portion of the amounts retained to obtain the services of a consultant to facilitate and coordinate the process of curriculum development and program redesign to improve teacher preparation at the participating institutions. The consultant assists with the administrative oversight of the various teacher education activities, coordinates the quarterly meetings that are held in Dallas, and works closely with THECB staff.

CONTRACT TERM: The contract resulting from this RFO, shall commence on the execution date and shall terminate on August 31, 2004 or upon the completion of Consultant's work described herein, whichever occurs first, unless terminated earlier pursuant to terms and conditions of the anticipated contract resulting from this RFO.

SCOPE OF WORK:

Overview: Consultant shall facilitate and coordinate a collaborative strategic planning process to involve TADC college administration in planning for collaborative distance education, upgrading of technology, curriculum development and redesign and improvement of ExCET preparation; work in collaboration with the Texas Higher Education Coordinating Board and TADC college administration to identify training needs of college faculty in the centers for teacher education in the areas related to distance education, curriculum development and improvement of ExCET preparation; facilitate and coordinate college administration and faculty professional development workshops to meet areas of need for delivery of distance education, curriculum development and redesign and improvement of ExCET preparation; and report progress in TADC teacher education enrollment, level of participation in the distance education program, successful student placements and other evaluative measures. Consultant shall be solely responsible and accountable for managing and completing all activities, tasks, milestones and deliverables in accordance with the Scope of Work and the deliverables commitment of this RFO. Assignment of THECB staff to assist Consultant in its responsibility shall in no way release the Consultant from its responsibility for completing any work or delivering any products set forth in this RFO, its Statement of Work or resulting contract.

Phase I - Proposal

Consultant shall provide to THECB a proposal of services to be performed, a proposed plan of action to be taken to achieve the goals set forth in this agreement, and evaluation of the attainment of the goals and objectives set forth by the agreement. The proposal must include specific objectives and timelines for meeting each phase of the plan. The proposal must also include consultant's travel costs to TADC schools named in Section 1 or other sites within Texas, including travel costs of THECB staff to monitor compliance with this contract.

In response to this RFO, the Consultant must:

provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase I objectives;

propose a detailed description of the tasks, activities, resources and time lines for performing Phase I objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

provide a brief description of Consultant's qualifications to perform Phase I objectives;

describe Consultant's prior experience in performing Phase I type objectives, with an emphasis on prior experience with public sector contracts and describe how organizations responded to Consultant's recommendations; and

provide a list of references where Phase I type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

Phase II - Progress Reports

Consultant shall submit to THECB a progress report providing information on 1) all records of evidence of expenditure of funds to assist the TADC school's efforts to improve student recruitment and retention; 2) evidence of professional development activities at the TADC schools to date; 3) report on the extent to which library, mathematics, science, technology laboratories and other facilities at the TADC schools have been enhanced; 4) evaluation of changes in curricula to better match TExES/ExCET competencies and outcomes at TADC schools; 5) evaluation of the effectiveness of technology integration to date at TADC schools; 6) summary of expenditures for personnel related to improved educator preparation at TADC schools; and 7) summary evidence that library holdings have been enhanced in the areas of certification at TADC schools.

In response to this RFO, the Consultant must:

provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase II objectives;

propose a detailed description of the tasks, activities, resources and time lines for performing Phase II objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

provide a brief description of Consultant's qualifications to perform the Phase II objectives;

describe Consultant's prior experience in performing Phase II type objectives with emphasis on prior experience with public sector contracts; and

provide a list of references where Phase II type objectives were met, including for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

Phase III - Final Report

Consultant shall submit a final report to THECB evaluating the effectiveness of the funds for improving teaching education at the TADC schools and detailing their progress to date in achieving the following: 1) improving the TExES/ExCET pass rate for TADC first-time test-takers and retake pass rates; 2) increasing the number of students enrolled in the teacher preparation program at TADC schools; 3) increasing the

graduation rate of teacher preparation candidates at TADC schools; 4) integrating existing technology into teacher preparation at TADC schools; and 5) summary evidence that courses are sent per semester via distance education technologies at TADC schools.

In response to this RFO, the Consultant must:

provide a detailed description of Consultant's suggested methodology, approach and alternatives to meeting Phase III objectives;

propose a detailed description of the tasks, activities, resources and time lines for performing Phase III objectives (the description should be sufficiently detailed to include in a Statement of Work for the contract);

provide a brief description of Consultant's qualifications to perform the Phase III objectives;

describe Consultant's prior experience in performing Phase III type objectives; and

provide a list of references where Phase III objectives were met, include for each reference: the name of the organization, the name, title, address and telephone number of a contact person and a brief description of the services performed.

Audit

Consultant understands that acceptance of state funds under this contract acts as acceptance of the authority of the State Auditor's Office, or any successor agency, to audit or investigate the expenditure of state funds under this contract. Consultant further agrees to cooperate fully with the State Auditor's Office or its successor, including providing all records requested. Consultant will ensure that this clause concerning authority to audit state funds received indirectly by subcontractors through the Consultant and the requirement to cooperate is included in any subcontract it awards.

Contract Deliverables

Consultant shall, in a good and satisfactory manner, carry out the tasks necessary to provide analysis, advice, recommendations, performances and Deliverables as called for in this RFO and in accordance with the Scope of Work. Such performances shall be rendered at schools named in Section 1 or other sites within Texas as hereinafter named by THECB or its designee, unless THECB, or its designee, shall otherwise specify in writing.

Substantive Outlines. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, a substantive outline for the work and content for: Phase I, Phase II, and Phase III. The substantive content of each outline shall include at a minimum a proposed final report format and a substantive discussion of the approach and methodology for the work to be performed. THECB and Consultant shall adjust or revise the scope of each outline to more clearly define the Scope of Work.

Draft Reports. As an interim deliverable, Consultant shall produce and present to THECB, for review and approval, an interim draft report for: Phase I, Phase II, and Phase III. This deliverable shall include: appendices with statistical data supporting findings, conclusions and recommendations. Consultant shall also include: charts, graphs, and other visual representations of core findings, conclusions and recommendations. The Consultant shall make such corrections to substance and content as identified by THECB. The Consultant shall make such adjustments and modifications to draft report as identified by THECB.

Final Reports. As a final contract Deliverable, Consultant shall produce a written report for: Phase I, Phase II, and Phase III. The specific organization and substantive content of each report shall be resolved throughout the project, with emphasis during the interim deliverable stages. Each report shall include the following topics and such other topics, which are specifically agreed upon between THECB and Consultant and the report must thoroughly resolve the particular issues unique to each deliverable:

Table of Contents

Executive Summary

Scope and Objectives

Summary of Significant observations and Conclusions

Overall Conclusions and Recommendations

Background

Detailed Scope and Objectives

Methodology

Assumptions

Detailed Findings and Observations

Analysis

Recommendations

Conclusion

Appendices

Status Reporting. During scheduled bi-weekly meetings, Consultant shall provide oral reports on Project progress and schedule, and a schedule of the next period's activities. Consultant shall document by written minutes of the meetings. Details of the period's activities shall include:

planned schedule versus actual schedule;

any problems encountered and status;

any failures to meet deadlines and proposed solutions; and

any deviations from the Scope of Work;

The Consultant shall disclose at the meeting the impact that any problems, failures or deviations have on the scheduled completion of tasks and work segments, the Phase, and the entire Project. Bi-weekly meetings may be by telephone conference call.

The Consultant shall submit to THECB a written report of schedule and/or content variances from the Scope of Work for each Phase, at the deliverable, task and activity levels, within five (5) working days from the time of their occurrence.

The Consultant shall submit monthly written reports to THECB that shall encompass:

the overall status of the Project, including unanticipated problems and delays and the impact on Project completion;

the prior month's accomplishments;

any outstanding problems and/or issues and proposed solutions; and

upcoming activities.

At a minimum, Consultant shall illustrate all upcoming activities using work plans specifically identifying tasks, personnel and begin and end dates.

Consultant and THECB shall develop a tentative schedule for periodic meetings with THECB. The meetings shall be for the purpose of providing information and additional guidance to Consultant in the performance of the Scope of Work. THECB may request interim advice from Consultant at such meetings. If appropriate, such meetings may coincide with regularly scheduled meetings to report status.

THECB shall have thirty (30) business days following delivery of the interim or final products, Deliverables or Services ("Acceptance Period"), to accept or reject any products, Deliverables or Services ("Deliverable") tendered by Consultant in performance under this RFO or resulting contract. Tendering to THECB a Deliverable for Acceptance constitutes a certification by the Consultant that the Deliverable fully meets all of the requirements in the RFO, Scope of Work and any resulting contract. In the event THECB elects to reject a Deliverable during the Acceptance Period, THECB shall notify Consultant in writing of such rejection. THECB shall assist Consultant in identifying the error, type of error or inadequacy of the Deliverable, to permit Consultant to understand the cause of the error or inadequacy and correct the error or inadequacy. Upon Consultant's resolution of any errors or inadequacies, identified during the Acceptance Period, the Deliverable shall be resubmitted to THECB for acceptance or rejection as stated above. Acceptance of the Deliverable(s) shall be in writing by an authorized representative of THECB ("Acceptance").

Time is of the essence in completing the Deliverables Phases I-III Deliverables. Completion for the Deliverables for Phases I-III is required no later than July 28, 2004. Consultant should provide proposed completion dates in the format below in order to meet the project completion date of August 31, 2004.

Phase I:

Substantive Outline: tendered to THECB on or before October 3, 2003;

Interim Draft Report: tendered to THECB on or before October 17, 2003;

Final Report: tendered to THECB on or before October 31, 2003;

Status Reports, according to the schedule;

In-person-report(s).

Phase II:

Substantive Outline: tendered to THECB on or before December 5, 2003;

Interim Draft Report: tendered to THECB on or before February 6, 2004;

Final Report: tendered to THECB on or before March 5, 2004;

Status Reports, according to the schedule;

In-person-report(s).

Phase III:

Substantive Outline: tendered to THECB on or before May 7, 2004;

Interim Draft Report: tendered to THECB on or before June 11, 2004;

Final Report: tendered to THECB on or before July 28, 2004

Status Reports, according to the schedule;

In-person-report(s).

As an additional Deliverable, Consultant shall make "in person" presentations of its findings, analysis, conclusions and recommendations on such dates, times, and places in Austin, Travis County, Texas as requested by THECB. Such presentations may include audiences internal or external to THECB. THECB anticipates that no more than two or three such presentations shall be required. These presentations may occur, within an 18-month time frame following the Acceptance of the final report(s).

OFFER PROCESS

Questions relating to the RFO. Consultant is expected to examine this Request for Offers (RFO) carefully, understand the terms and conditions for providing the pertinent services, and respond completely. Failure to respond completely may result in disqualification. Questions about this RFO shall be directed, in writing only, to the address provided below, on company letterhead or via e-mail. Verbal questions and explanations are not permitted. Electronic submissions by facsimile shall be accepted. THECB reserves the right to provide or not to provide additional clarification in response to Consultant's questions. To be eligible to receive Consultant questions and responses to this RFO, if any, the Consultant, must file a written letter of interest with THECB no later than 2:00 p.m. on Friday, August 29, 2003. No inquiries or questions shall be answered after 2:00 p.m. on Friday, August 29, 2003 to allow ample distribution time for any changes. Any questions or letters of interest regarding this RFO may be directed to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Division of Universities and Health-Related Institutions

Texas Higher Education Coordinating Board

P. O. Box 12788

Austin TX 78711

Delivery of Offer. A signed original and five (5) copies of the offer must be received by THECB, no later than 5:00 p.m., Central Time, September 12, 2003. Any offer received after the specified time and date shall not be considered. Conditioned on THECB's receipt of the requisite finding of fact from the Governor's Budget and Planning Office pursuant to Texas Government Code section 2254.028, THECB anticipates entering into the resultant contract on or about September 19, 2003. The Consultant's offers shall be delivered to:

Dr. Susan Hetzler, Program Director for Educator Preparation

Division of Universities and Health-Related Institutions

Texas Higher Education Coordinating Board

1200 East Anderson Lane

Austin TX 78752

P.O. Box 12788, Austin TX 78711

THECB Reservation of Rights. THECB has sole discretion and the absolute right to reject any and all offers, terminate this Request for Offers or amend, delay or re-issue this Request for Offers. THECB reserves the right to remedy technical errors in the RFO process, waive any informalities and irregularities relating to any or all Offers submitted in response to this request and to negotiate modifications necessary to improve the quality or cost effectiveness of any Offer to THECB. THECB further reserves the right to accept one or more offers and contract for any grouping or individual Deliverables described in this RFO. The issuance of this Request for Offers does not constitute a commitment by THECB to award any contract. THECB intends any material provided in this Request for Offers only and solely as a means of identifying the scope of services and qualifications sought.

Expenses for Preparing Offer. THECB shall not pay any cost incurred by a prospective Consultant in the preparation of a response to this Request for Offers and such costs shall not be included in the budget of the prospective Consultant submitted pursuant to this Request for Offers. The State of Texas assumes no responsibility for expenses incurred in the preparation of responses to this Request for Offers. In the event that the prospective Consultant is engaged to provide the services contemplated by this Request for Offers, any expenses incurred by the prospective Consultant associated with the negotiation and execution

of the contract for the engagement shall remain the obligation of the Consultant.

Non-responsive Offers. Failure to respond to all required portions of this RFO may result in the Consultant's response being deemed non-responsive. If a Consultant's response is deemed non-responsive by THECB, the response shall be disqualified. Offers must be signed by an officer or principal of the Consultant, however, they may be signed by an agent if accompanied by written evidence of authority.

Duration of Offer. All provisions in Consultant's Offer, including any estimated or projected costs, shall remain valid for ninety (90) days following the deadline date for submissions or if an Offer is selected, throughout the entire term of the Contract. Offers may be withdrawn in writing prior to the date and time set for receipt of Offers.

Negotiation with Consultant. Preliminary and final negotiations with top-ranked prospective Consultants may be held at the discretion of THECB. THECB may decide, at its sole option and in its sole discretion, to negotiate with one, several, or none of the prospective Consultants submitting Offers pursuant to this request. During the negotiation process, THECB and any prospective Consultant(s) with whom THECB chooses to negotiate, may adjust the scope of the services, alter the method of providing the services, and/or alter the costs of the services so long as the changes are mutually agreed upon and are in the best interest of THECB. Statements made by a prospective Consultant in the Offer packet or in other appropriate written form shall be binding unless specifically changed by the Consultant, in writing, during final negotiations. A contract award may be made by THECB without negotiations if THECB determines that such an award is in THECB's best interest.

Selection Criteria. THECB shall conduct an evaluation of all offers that conform to the requirements of this RFO. In selecting a consultant, THECB shall: (1) base its choice on demonstrated competence, knowledge, and qualifications and on the reasonableness of the proposed fee for the services; and (2) if other considerations are equal, give preference to a consultant whose principal place of business is in the State of Texas or who shall manage the consulting contract wholly from an office in the State of Texas. Conforming offers shall be reviewed by a Selection Committee consisting of THECB staff members.

Award/Contract Subject to Available Appropriations. This Request for Offers and any contract which may result from it are subject to appropriation of State funds and the Request for Offers and/or contract may be terminated at any time if such funds are not available.

Public Information. All offers are considered to be public information subsequent to an award of the contract. All information relating to Offers shall be subject to the Public Information Act, Texas Government Code Annotated, Chapter 552, after the award of the contract. All documents shall be presumed to be public unless a specific exception in that Act applies. Prospective Consultants are requested to avoid providing information which is proprietary, but if it is necessary to do so, offers must specify the specific information which the prospective Consultant considers to be exempted from disclosure under the Act and those pages or portions of pages which contain the protected information must be clearly marked. The specific exemption that the prospective Consultant believes protects that information must be cited. THECB shall assume that an Offer submitted to THECB contains no proprietary or confidential information if the prospective Consultant has not marked or otherwise identified such information in the offer at the time of its submission to THECB.

Negotiation of Contract Terms and Conditions. At any time after the offers are opened, THECB may negotiate contract terms and conditions with one or more of the Consultants. An award of a contract is expressly conditioned upon THECB and Consultant reaching an agreement on contract terms and conditions. THECB reserves the sole right, in its discretion, to determine if contract terms and conditions are acceptable. If the Consultant and THECB are unable to reach an agreement on the contract terms and conditions, THECB shall disqualify that Consultant, and then THECB shall negotiate contract terms and conditions with the next best Consultant.

Return of Offers After Selection Process. All offers become property of THECB upon receipt and shall not be returned.

Ethics Standards. No person shall participate or assume a responsibility in the implementation and execution of this RFO process including, but not limited to, the evaluation of offers and selections of Consultant's, when such participation constitutes a conflict of interest as defined by state law or executive order. After the RFO is published, THECB or any employee shall not furnish any technical information, or solicit offers and/or prices for its requirements or take any type of action which would or could be construed to give a direct or indirect advantage or disadvantage to any potential Consultant.

Restrictions on Communication. After the RFO has been issued, Consultant is prohibited from communicating with THECB staff regarding the RFO or offers, with the following exceptions:

Dr. Susan Hetzler, in writing;

The Committee, if interviews are conducted;

THECB reserves the right to contact any Consultant for clarification after responses are opened and/or to further negotiate with any Consultant if such is deemed desirable by THECB.

THECB shall not schedule meetings with representatives of any Consultant to discuss offers, and Consultant should not contact THECB employees to explain, clarify or discuss their Offers before an award has been made except as set out in this section. Violation of this provision may lead to disqualification from this process.

CONTENT OF OFFERS

All Offers must be typed, double spaced, on 8 1/2" x 11" paper, clearly legible, with all pages sequentially numbered and bound or stapled together. The name of the prospective Consultant must be typed at the top of each page. Do not attach covers, binders, pamphlets, or other items not specifically requested.

A Table of Contents must be included with respective page numbers opposite each topic. The Offer must contain the following completed items in the following sequence:

Transmittal Letter: A letter addressed to Dr. Susan Hetzler, Program Director for Educator Preparation, Division of Universities and Health-Related Institutions, Texas Higher Education Coordinating Board, PO Box 12788, Austin, TX 78711 that identifies the person or entity submitting the Offer and includes a commitment by that person or entity to provide the services required by THECB. The letter must specifically identify that this Offer is in reference to THECB Texas Association of Developing Colleges-Centers for Teacher Education RFO. The letter must include "full acceptance of the terms and conditions of the contract resulting from this Request for Offers." Any exceptions must be specifically noted in the letter. However, any exceptions may disqualify the Offer from further consideration at THECB's discretion. The letter must state, "The Offer enclosed is binding and valid at the discretion of THECB."

Executive Summary: The Offer must include a summary of the contents of the Offer, excluding cost information. Address services that are offered beyond those specifically requested as well as those offered within specified deliverables. Explain any missing or other requirements not met, realizing that failure to provide necessary information

or offer required service deliverables may result in disqualification of the Offer.

Project Offer: The Offer must track and reference each section number in Section 3 Scope of Work. Consultant should provide a substantive description of how Consultant proposes to satisfy each item. If Consultant cannot satisfy a particular item or requirement, then Consultant must clearly identify the items or requirements it cannot satisfy. If Consultant believes it can best meet the needs of THECB by suggesting a modification to the Scope of Work, please suggest alternatives. If an alternative is proposed, please include a separate section identified as "Alternative Offer to Section X.X." THECB reserves the right to not consider alternative Offers. If a response requires Consultant to assume facts not presented in the RFO, Consultant must clearly identify such assumed facts. If a section requests specific information, please include the requested information.

Cost Offer: THECB is interested in awarding a fixed fee contract. Because THECB may enter into a contract for all or some of the deliverables, please identify each deliverable and the corresponding fee and include a proposed schedule of payments. Consultant is welcome to suggest alternative fee Offers, but if an alternative is offered, please clearly identify that the fee Offer is an alternative. The THECB reserves the right to not consider alternative Offers.

Qualifications: While THECB is interested in the experience and qualifications of Consultant's firm or company, THECB is particularly interested in the experience of the individual staff Consultant intends to apply to this engagement. Therefore, please include information relating to the firm's or company's experience and qualification and please attach detailed resumes for each staff that Consultant intends to apply to this engagement. The resumes should identify the specific experience, projects and assignments for each staff offered. Emphasis should be placed on similar projects within the public sector and/or higher education.

References: Prospective Consultants shall provide the names of at least three (3) different references meeting the following criteria:

The reference company or entity must have engaged the prospective Consultant for the same or similar services as those to be provided in accordance with the terms of this Request for Offers.

The services must have been provided by the prospective Consultant to the reference company or entity within the five (5) years preceding the issuance of this Request for Offers. The reference company or entity must not be affiliated with the prospective Consultant in any

ownership or joint venture arrangement.

References must include the company or entity name, address, contact name, and telephone number for each reference. THECB may not be used as a reference. The contact name must be the name of a senior representative of the reference company or entity who was directly responsible for interacting with the prospective Consultant throughout the performance of the engagement and who can address questions about the performance of the prospective Consultant from personal experience. References shall accompany the Offer.

For each such reference, the prospective Consultant shall provide a signed release from liability in the form of a letter addressed to the reference company or individual signed by Consultant for each reference provided in response to this requirement. The release from liability shall absolve the specified reference company or entity from liability for information provided to THECB concerning the prospective Consultant's performance of its engagement with the reference.

Financial Condition: As part of any Offer submission, the prospective Consultant must include information regarding financial condition, including income statements, balance sheets, and any other information which accurately shows the prospective Consultant's current financial condition. All offers shall include the Consultant's State of Texas vendor identification number or federal tax identification number. THECB reserves the right to request such additional financial information as it deems necessary to evaluate the prospective Consultant, and by submission of an Offer, the prospective Consultant agrees to provide same. The prospective Consultant must disclose if and when it has filed for bankruptcy within the last seven (7) years. For prospective Consultants conducting business as a corporation, partnership, limited liability partnership, or other form of artificial person, the prospective Consultant must disclose whether any of its principals, partners, or officers have filed for bankruptcy within the last seven (7) years.

Certifications/Affirmations/Disclosures: By signing the transmittal letter and submitting an Offer, Consultant makes and agrees to make the following certifications, affirmations and disclosures. If any explanation or qualification is required for any certification, affirmation or disclosure, you must include such explanation or qualification in your transmittal letter. A false statement or misleading statement in this section is a material breach of contract and shall void the submitted Offer or any resulting contracts. Please restate each of the following certifications, affirmations or disclosures in this section of your Offer.

The Consultant has not given, nor intends to give at any time hereafter, any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor, or service to a public servant in connection with the submitted Offer.

The Consultant is not currently delinquent in the payment of any franchise tax owed the State of Texas.

Neither the Consultant nor the firm, corporation or partnership or institution represented by the Consultant or anyone acting for such firm, corporation or institution has violated the antitrust laws of this State, the Federal antitrust laws nor communicated directly or indirectly the Offer made to any competitor or any other person engaged in such line of business.

The Consultant has not received compensation for participation in the preparation of the specification for this Offer.

Pursuant to Texas Family Code, Section 231.006 (relating to delinquent child support), the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive a specified payment and acknowledge that this contract may be terminated and payment may be withheld if this certification is inaccurate.

An Offer must include the names and Social Security Numbers of each person with at least a 25% ownership of the business entity submitting this Offer.

Pursuant to Section 2155.004 Government Code (relating to issuance of warrants to persons indebted to the State or who owe delinquent taxes to the State) the Consultant certifies that the individual or business entity named in this Offer is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate.

Consultant acknowledges and agrees that, to the extent Consultant owes any debt or delinquent taxes to the State of Texas, in accordance with Section 403.055(h), Government Code, any payments Consultant is owed under this Agreement shall be applied by the Comptroller of Public Accounts toward any debt or delinquent taxes Consultant owes the State of Texas until the debt or delinquent taxes are paid in full.

Pursuant to Article 2.45 of the Texas Business Corporation Act, Consultant must certify that it is not delinquent in a tax owed to the State under Chapter 171 of the Texas Tax Code. Any Consultant who is delinquent may not be awarded a contract by the State.

With respect to all services, if any, purchased pursuant to this RFO, Consultant represents and warrants that it shall buy Texas products and materials for use in providing the services authorized herein when such products and materials are available at a comparable price and in a comparable period of time when compared to non-Texas products and materials.

Consultant certifies that if a Texas address is shown as the address of the vendor, Vendor qualifies as a Texas Resident Bidder as defined in Rule 1 TAC 111.2.

If the consultant is an individual not residing in Texas or a business entity not incorporated in or whose principal domicile is not in Texas, the consultant certifies that it either: (a) holds a permit issued by the Texas comptroller to collect or remit all state and local sales and use taxes that become due and owing as a result of the consultant's business in Texas; or (b) does not sell tangible personal property or services that are subject to the state and local sales and use tax.

If the Consultant is an individual who has previously been employed by THECB or any other Texas state agency at any time during the two years preceding their Offer, the Consultant must disclose the following:

the nature of the previous employment with THECB or any other state agency;

the date the employment was terminated;

the annual rate of compensation for the employment at the time of the Consultant's termination.

If a Consultant is subject to this disclosure and fails to make such a disclosure, the Offer shall be disqualified.

TRD-200304390
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: July 21, 2003

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Texas Department of Human Services

Notice of Public Hearing

The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on August 18, 2003, to receive public comment on proposed payment rates for the following Medicaid and non-Medicaid programs: Community Based Alternatives - Home and Community Support Services and Assisted Living/Residential Care; Community Living Assistance and Support Services; Consolidated Waiver Program; Consumer-Managed Personal Assistance Services - Consumer Directed Services; Day Activity and Health Services; Deaf-Blind With Multiple Disabilities Waiver; Medically Dependent Children Program; Primary Home Care/Family Care; and Residential Care. The Texas Department of Human Services operates these programs. These payment rates are proposed to be effective September 1, 2003. The hearing will be held in compliance with Title 1 of the Texas Administrative Code (TAC) §355.105(g) and Title 40 TAC §20.105(g), which require public hearings on proposed payment rates. The public hearing will be held on August 18, 2003, at 10:30 a.m. in the Public Hearing Room (First Floor, Building III) of the Riata Building at 12555 Riata Vista Circle, Austin, Texas 78727-6404, with entry required through Security at the entrance of 12545 Riata Vista Circle. Written comments regarding payment rates may be submitted in lieu of testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Tony Arreola, HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101. Express mail can be sent, or written comments can be hand delivered, to Mr. Arreola, HHSC Rate Analysis, MC H-400, Riata Building III, 12555 Riata Vista Circle, Austin, Texas, 78727-6404. Alternatively, written comments may be sent via facsimile to Mr. Arreola at (512) 685-3104. Interested parties may request to have mailed to them or may pick up a briefing package concerning the proposed payment rates by contacting Tony Arreola at (512) 685-3124 or at HHSC Rate Analysis, MC H-400, 1100 West 49th Street, Austin, Texas 78756-3101.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Mr. Arreola, by August 8, 2003, so that appropriate arrangements can be made.

TRD-200304429
Paul Leche
General Counsel, Legal Services
Texas Department of Human Services
Filed: July 23, 2003

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Texas Department of Insurance

Third Party Administrator Applications

The following third party administrator (TPA) applications have been filed with the Texas Department of Insurance and are under consideration.

Application for admission to Texas of WHP Health Initiatives, Inc. DBA Walgreens Health Initiatives, a foreign third party administrator. The home office is Deerfield, Illinois.

Application for admission to Texas of Ancillary Care Management, Inc., a foreign third party administrator. The home office is Wilmington, Delaware.

Any objections must be filed within 20 days after this notice was filed with the Secretary of State, addressed to the attention of Matt Ray, MC 107-1A, 333 Guadalupe, Austin, Texas 78701.

TRD-200304449
Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance
Filed: July 23, 2003

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Texas Lottery Commission

Instant Game Number 376 "10 Times the Money"

1.0 Name and Style of Game.

A. The name of Instant Game No. 376 is "10 TIMES THE MONEY". The play style in Game 1 is "key number/symbol match". The play style in Game 2 is "match three". The play style in Game 3 is "row, column, diagonal". The play style in Game 4 is "key number/symbol match". The play style in Game 5 is "key number/symbol match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 376 shall be $10.00 per ticket.

1.2 Definitions in Instant Game No. 376.

A. Display Printing - That area of the instant game ticket outside of the area where the Overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the ticket.

C. Play Symbol - One of the symbols which appears under the Latex Overprint on the front of the ticket. Each Play Symbol is printed in Symbol font in black ink in positive. The possible play symbols are: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, $1.00, $2.00, $5.00, $10.00, $15.00, $20.00, $50.00, $100, $250, $500, $1,000, $10,000, $25,000, $100,000, $250,000, 10X SYMBOL.

D. Play Symbol Caption - the small printed material appearing below each Play Symbol which explains the Play Symbol. One and only one of these Play Symbol Captions appears under each Play Symbol and each is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 376 - 1.2D

PLAY SYMBOL	CAPTION
$1.00	ONE$
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$250	TWO FTY
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$25,000	25 THOU
$100,000	100 THOU
$250,000	250 THOU
10X SYMBOL	WIN X10
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN

E. Retailer Validation Code - Three small letters found under the removable scratch-off covering in the play area, which retailers use to verify and validate instant winners. The possible validation codes are:

Figure 2: GAME NO. 376 - 1.2E

CODE	PRIZE
TEN	$10.00
FTN	$15.00
TWN	$20.00

Low-tier winning tickets use the required codes listed in Figure 2:16. Non-winning tickets and high-tier tickets use a non-required combination of the required codes listed in Figure 2:16 with the exception of ∅, which will only appear on low-tier winners and will always have a slash through it.

F. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a four (4) digit security number which will be boxed and placed randomly within the Serial Number. The remaining nine (9) digits of the Serial Number are the Validation Number. The Serial Number is positioned beneath the bottom row of play data in the scratched-off play area. The format will be: 0000000000000.

G. Low-Tier Prize - A prize of $10.00, $15.00, $20.00.

H. Mid-Tier Prize - A prize of $50.00, $100, $250, $500.

I. High-Tier Prize - A prize of $1,000, $10,000, $250,000.

J. Bar Code - A 22 (twenty-two) character interleaved two (2) of five (5) bar code which will include a three (3) digit game ID, the seven (7) digit pack number, the three (3) digit ticket number and the nine (9) digit Validation Number. The bar code appears on the back of the ticket.

K. Pack-Ticket Number - A thirteen (13) digit number consisting of the three (3) digit game number (376), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 000 and end with 074 within each pack. The format will be: 376-0000001-000.

L. Pack - A pack of "10 TIMES THE MONEY" Instant Game tickets contain 75 tickets, which are packed in plastic shrink-wrapping and fanfolded in pages of one (1). The packs will alternate. One will show the front of ticket 000 and back of 074 while the other fold will show the back of ticket 000 and front of 074.

M. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401.

N. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "10 TIMES THE MONEY" Instant Game No. 376 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general ticket validation requirements set forth in Texas Lottery Rule 401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each instant ticket. A prize winner in the "10 TIMES THE MONEY" Instant Game is determined once the latex on the ticket is scratched off to expose 54 (fifty-four) play symbols. In Game 1, if the player matches the Winning Number to any of the Your Numbers, the player will win the prize shown for that matching number. If the player gets a 10X symbol, the player will win 10 times the prize shown below the 10X symbol. In Game 1, Your Numbers is defined as the numbers appearing above the prize amounts in the play area. Game 2, if the player matches three identical amounts, the player will win that amount. If the player matches 2 identical amounts and also gets a 10X symbol, the player will win 10 times the matched amount. In Game 3, if the player gets three identical amounts in a row, column or diagonal, the player will win that amount. If the player gets 2 identical amounts and a 10X symbol in a row, column or diagonal, the player will win 10 times that amount. In Game 4, if the player matches the Winning Number to any of the Your Numbers, the player will win the prize shown. If the player gets a 10X symbol the player will win 10 times the prize shown under the 10X symbol. In Game 4, Your Numbers is defined as the numbers appearing above the prize amounts in the play area. In Game 5, if the player matches the Winning Number to any of the Your Numbers, the player will win the prize shown. If the player gets a 10X symbol the player will win 10 times the prize shown under the 10X symbol. In Game 5, Your Numbers is defined as the numbers appearing above the prize amounts in the play area. No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 54 (fifty-four) Play Symbols must appear under the latex overprint on the front portion of the ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink;

5. The ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 54 (fifty-four) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures.

17. Each of the 54 (fifty-four) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. Although not all prize symbols can be won in each game, all prize symbols may be used in non-winning locations.

C. Game 1 & 4: No duplicate Your Numbers play symbol in a Game.

D. Game 1 & 4: No duplicate non-winning prize symbol in a Game.

E. Game 1 & 4: The "10X" symbol will only appear in winning Games according to the prize structure.

F. Game 2: No more than 2 pairs of like play symbols in this Game.

G. Game 2: No four or more like play symbols in this Game.

H. Game 2: The "10X" symbol will appear according to the prize structure and will only appear once in this Game.

I. Game 2: When the "10X" symbol appears in a winning Game, there will be no more than two like play symbols in this Game.

J. Game 3: No occurrence of three amounts in a row, column or diagonal except on intended winning Games.

K. Game 3: The "10X" symbol will only appear in winning Games according to the prize structure.

L. Game 5: No duplicate Winning Numbers in a Game.

M. Game 5: No duplicate Your Numbers play symbols in a Game.

N. Game 5: No duplicate non-winning prize symbol in a Game.

O. Game 5: The "10X" symbol will only appear in winning Games according to the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim an "10 TIMES THE MONEY" Instant Game prize of $10.00, $15.00, $20.00, $50.00, $100, $250, or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, make payment of the amount due the claimant and physically void the ticket; provided that the Texas Lottery Retailer may, but is not, in some cases, required to pay a $50.00, $100, $250, or $500 ticket. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and 2.3.C of these Game Procedures.

B. To claim an "10 TIMES THE MONEY" Instant Game prize of $1,000, $10,000, or $250,000, the claimant must sign the winning ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming an "10 TIMES THE MONEY" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The risk of sending a ticket remains with the claimant. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct a sufficient amount from the winnings of a person who has been finally determined to be:

1. delinquent in the payment of a tax or other money collected by the Comptroller, the Texas Workforce Commission, or Texas Alcoholic Beverage Commission;

2. delinquent in making child support payments administered or collected by the Attorney General; or

3. delinquent in reimbursing the Texas Department of Human Services for a benefit granted in error under the food stamp program or the program of financial assistance under Chapter 31, Human Resource Code;

4. in default on a loan made under Chapter 52, Education Code; or

5. in default on a loan guaranteed under Chapter 57, Education Code

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize of less than $600 from the "10 TIMES THE MONEY" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of more than $600 from the "10 TIMES THE MONEY" Instant Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant Game. Any prize not claimed within that period, and in the manner specified in these Game Procedures and on the back of each ticket, shall be forfeited.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated therefor, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated therefor, the player whose signature appears in that area shall be the owner of the ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the ticket in the space designated therefore. If more than one name appears on the back of the ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 4,083,075 tickets in the Instant Game No. 376. The approximate number and value of prizes in the game are as follows:

Figure 3: GAME NO. 376 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$10	1,061,540	3.85
$15	163,278	25.01
$20	136,166	29.99
$50	81,659	50.00
$100	28,601	142.76
$250	6,808	599.75
$500	2,642	1,545.45
$1,000	24	170,128.13
$10,000	3	1,361,025.00
$250,000	3	1,361,025.00

*The number of actual prizes may vary based on sales, distribution, testing, and number of prizes claimed.

**The overall odds of winning a prize are 1 in 2.76. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 376 without advance notice, at which point no further tickets in that game may be sold.

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 376, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC, Chapter 401, and all final decisions of the Executive Director.

TRD-200304338
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: July 17, 2003

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Manufactured Housing Division

Notice of Administrative Hearing

Wednesday, August 20, 2003, 1:00 p.m.

State Office of Administrative Hearings, William P. Clements Building, 300 West 15th Street, 4th Floor, Austin, Texas

AGENDA

Administrative Hearing before an administrative law judge of the State Office of Administrative Hearings in the matter of the complaint of the Manufactured Housing Division of the Texas Department of Housing and Community Affairs vs. CRG Holding, LLC dba Cavco Home Center to hear alleged violations of §6B(d) and §6B(e) (currently found at §1201.256(d) of the Occupations Code), §7(j)(3) (currently found at §1201.551(a)(3) of the Occupations Code), §8(b) (currently found at §1201.455(a) of the Occupations Code), §8(d) (currently found at §1201.451 of the Occupations Code), §14(m) (currently found at §1201.361 of the Occupations Code), and §18(b) (currently found at §1201.603(a) of the Occupations Code) of the Act and §80.50(e) and §80.123(b) of the Rules by not having the consumer sign or deliver the Wind Zone notice to consumer at the time consumers agreed to purchase the home, by selling a used manufactured home without giving a written warranty that the home was habitable, by selling/negotiating to sell a home which was not situated on a licensed sales location, by selling a used manufactured home without the appropriate, timely transfer of a good and marketable title, and by selling a used manufactured home without giving the home owner a written warranty that the installation of the home was done in accordance with all standards, rules, regulations, administrative orders, and requirements of the Division.

SOAH 332-03-3863. Department MHD2003001083-DT.

Contact: Jim R. Hicks, P.O. Box 12489, Austin, Texas 78711-2489, (512) 475-3578, jhicks@tdhca.state.tx.us

TRD-200304403
Timothy K. Irvine
Executive Director
Manufactured Housing Division
Filed: July 22, 2003

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Texas Board of Pardons and Paroles

Correction of Error

In the July 18, 2003, issue of the *Texas Register,* the Texas Board of Pardons and Paroles proposed amendments to 37 TAC §141.60 and §141.61. The telephone number published at the end of the notice on page 5647 is incorrect. The correct telephone number for more information is (512) 406-5458.

TRD-200304442

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Public Utility Commission of Texas

Notice of Application for Certificate of Convenience and Necessity in Crane and Upton Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 2, 2003, for a certificate of convenience and necessity (CCN) in Crane and Upton counties, Texas.

Docket Style and Number: Joint Application of LCRA Transmission Services Corporation and AEP Texas North Company for a CCN to add a Second 138-kV Circuit to an Existing Transmission Line in Crane and Upton Counties. Docket Number 27762.

The Application: LCRA Transmission Services Corporation (the Corporation) and AEP Texas North Company (AEP Texas North) filed an application for a CCN to construct a second 138-kV circuit on an existing transmission line stretching from the Corporation's North McCamey Switching Station to a cut-in point approximately 25 miles north of the North McCamey Switching Station. The Corporation proposes to own this circuit while AEP Texas North will operate and maintain the facilities under a multi-year agreement.

This project stretches from approximately one mile north of the City of McCamey to approximately two miles east of the City of Crane. The proposed route originates at the existing North McCamey Switching Station and extends northwest, crossing to the west side of US 385 approximately 4.0 miles northwest of the intersection of US 385 and US 67 in McCamey. The route continues into Crane County where it then crosses back to the east side of US 385 and back into Upton County. Then the route angles north around King Mountain and continues a northerly course just east of the boundary line separating Crane and Upton counties, crossing State Highway 329 approximately 2.3 miles east of its intersection with US 385 in Crane before terminating at the cut-in point.

The costs for this proposed transmission facilities project is estimated at $6,137,363.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by August 18, 2003, by mail at P. O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 27762.

TRD-200304330
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

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Notice of Application for Certificate of Convenience and Necessity in Crane, Crockett, and Upton Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on July 2, 2003, for a certificate of convenience and necessity (CCN) in Crane, Crockett, and Upton counties, Texas.

Docket Style and Number: Joint Application of LCRA Transmission Services Corporation and AEP Texas North Company for a CCN to add a Second 138-kV Circuit to an Existing Transmission Line in Crane, Crockett, and Upton Counties. Docket Number 27764.

The Application: LCRA Transmission Services Corporation (the Corporation) and AEP Texas North Company (AEP Texas North) provide this notice of intent to secure a CCN to construct a second 138-kV circuit approximately 10 miles in length on an existing transmission line stretching from the Corporation's North McCamey Switching Station to the AEP Texas North Rio Pecos Substation. The Corporation proposes to own this circuit while AEP Texas North will operate and maintain the facilities under a multi-year agreement.

This project originates at the North McCamey Switching Station, located approximately one mile north of the City of McCamey and extends approximately 9.67 miles southwest to the Rio Pecos Substation. The proposed route crosses County Road 475 approximately 0.1 mile north of its intersection with US 385, continuing in a southwesterly direction. The route then crosses US 385 approximately 1.2 miles north of the intersection of US 385 and US 67 in McCamey, and continues its southwesterly path to terminate at the Rio Pecos Substation.

The costs for this proposed transmission facilities project is estimated at $4,438,050.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by August 18, 2003, by mail at P. O. Box 13326, Austin, Texas 78711- 3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech- impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 27764.

TRD-200304331
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

Notice of Application for Relinquishment of a Service Provider Certificate of Operating Authority

On July 17, 2003, C2C Fiber, Inc. filed an application with the Public Utility Commission of Texas (commission) to relinquish its service provider certificate of operating authority (SPCOA) granted in SPCOA Certificate Number 60193. Applicant intends to relinquish its certificate.

The Application: Application of C2C Fiber, Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 28143.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 6, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28143.

TRD-200304388
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2003

Notice of Application for Waiver of Denial of Request for NXX Code

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on July 21, 2003, for waiver of denial by North American Numbering Plan Administrator (NANPA) of applicant's request for NXX codes.

Docket Title and Number: Application of Fort Bend Telephone Company (FBTC) for Waiver of Denial by NANPA of NXX Code Request in the Katy Rate Center. Docket Number 28159.

The Application: A customer of FBTC, the Katy Independent School District (KISD), has requested that FBTC provide ten (10) 1000 number blocks for use with Primary Rate Interface circuits installed recently. FBTC stated that its existing telephone resources cannot satisfy its customer's specific need for blocks of 1000 sequential numbers available within the Katy Central Office and it is unable to use numbers from another switch to satisfy the customer's request. The NANPA denied FBTC's request based on practices designed to prohibit acquisition of unneeded numbering resources. FBTC asks that the Commission waive the NANPA's denial of FBTC's NXX assignment request and direct NANPA to provide FBTC the ten (10) thousands-blocks in the Katy rate center as requested.

Persons wishing to comment upon the action sought should contact the Public Utility Commission of Texas, by mail at P.O. Box 13326, Austin, Texas, 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 11, 2003. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll-free at 1-800-735-2989. All comments should reference Docket Number 28159.

TRD-200304436
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 23, 2003

Notice of Application to Change Rates for Wholesale Transmission Service

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 3, 2003, for approval to change rates for wholesale transmission service.

Docket Title and Number: Application of City of Garland to Change Rates for Wholesale Transmission Service, Docket Number 28090.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 4, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28090.

TRD-200304419
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Notice of Application to Relinquish a 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 July 14, 2003, to relinquish a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Docket Title and Number: Application of MidState Telecommunications to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 28011 before the Public Utility Commission of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at

1-888-782-8477 no later than August 6, 2003. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 28011.

TRD-200304323
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 16, 2003

Public Notice of Amendment to Interconnection Agreement

On July 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Netspan Corporation doing business as Foremost Telecommunications, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28131. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28131. 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 August 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28131.

TRD-200304325
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 16, 2003

Public Notice of Amendment to Interconnection Agreement

On July 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Starlight Phone, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28133. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28133. 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 August 18, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct

a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28133.

TRD-200304334
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

Public Notice of Amendment to Interconnection Agreement

On July 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Spruce Communications, LP, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28134. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28134. 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 August 18, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28134.

TRD-200304335
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

Public Notice of Amendment to Interconnection Agreement

On July 16, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and Pathway Com-Tel, Incorporate, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28135. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28135. 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 August 18, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule

§22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28135.

TRD-200304336
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

Public Notice of Amendment to Interconnection Agreement

On July 16, 2003, Southwestern Bell Telephone, LP doing business as Texas and Nextel of Texas, Incorporated, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28136. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28136. 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 August 18, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P. O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28136.

TRD-200304337
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 17, 2003

Public Notice of Amendment to Interconnection Agreement

On July 17, 2003, Teleport Communications Houston, Inc. and Southwestern Bell Telephone, LP doing business as SBC Texas, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28145. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28145. 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 August 19, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28145.

TRD-200304420
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Public Notice of Amendment to Interconnection Agreement

On July 17, 2003, AT&T Communications of Texas, LP and Southwestern Bell Telephone, LP doing business as SBC Texas, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28146. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28146. 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 August 19, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28146.

TRD-200304421
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Public Notice of Amendment to Interconnection Agreement

On July 17, 2003, TCG Dallas and Southwestern Bell Telephone, LP doing business as SBC Texas, collectively referred to as applicants, filed a joint application for approval of amendment to an existing interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28147. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the amendment to the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28147. 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 August 19, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28147.

TRD-200304422
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Public Notice of Interconnection Agreement

On July 15, 2003, Southwestern Bell Telephone, LP doing business as SBC Texas and IntraLinc, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28124. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28124. 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 August 15, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136. All correspondence should refer to Docket Number 28124.

TRD-200304324
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 16, 2003

Public Notice of Interconnection Agreement

On July 21, 2003, Metro Teleconnect Companies, Inc. and Valor Telecommunications of Texas, LP, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104- 104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28161. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28161. 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 August 21, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28161.

TRD-200304423
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Public Notice of Interconnection Agreement

On July 21, 2003, Advantage Communications, Inc. and Kerrville Telephone Company, collectively referred to as applicants, filed a joint application for approval of interconnection agreement under §252(i) of the federal Telecommunications Act of 1996, Public Law Number 104-104, 110 Statute 56, (codified as amended in scattered sections of 15 and 47 United States Code) (FTA) and the Public Utility Regulatory Act, Texas Utilities Code Annotated, Chapters 52 and 60 (Vernon 1998 & Supplement 2003) (PURA). The joint application has been designated Docket Number 28162. The joint application and the underlying interconnection agreement are available for public inspection at the commission's offices in Austin, Texas.

The commission must act to approve the interconnection agreement within 35 days after it is submitted by the parties.

The commission finds that additional public comment should be allowed before the commission issues a final decision approving or rejecting the interconnection agreement. Any interested person may file written comments on the joint application by filing three copies of the comments with the commission's filing clerk. Additionally, a copy of the comments should be served on each of the applicants. The comments should specifically refer to Docket Number 28162. 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 August 21, 2003, and shall include:

1) a detailed statement of the person's interests in the agreement, including a description of how approval of the agreement may adversely affect those interests;

2) specific allegations that the agreement, or some portion thereof:

a) discriminates against a telecommunications carrier that is not a party to the agreement; or

b) is not consistent with the public interest, convenience, and necessity; or

c) is not consistent with other requirements of state law; and

3) the specific facts upon which the allegations are based.

After reviewing any comments, the commission will issue a notice of approval, denial, or determine whether to conduct further proceedings concerning the joint application. The commission shall have the authority given to a presiding officer pursuant to P.U.C. Procedural Rule §22.202. The commission may identify issues raised by the joint application and comments and establish a schedule for addressing those issues, including the submission of evidence by the applicants, if necessary, and briefing and oral argument. The commission may conduct a public hearing. Interested persons who file comments are not entitled to participate as intervenors in the public hearing.

Persons with questions about this action, or who wish to comment on the joint application should contact the Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936- 7136. All correspondence should refer to Docket Number 28162.

TRD-200304424
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2003

Public Notice of Workshop on Amendments to Customer Protection Rules for Retail Electric Service, §§25.471, 25.472, 25.477, 25.478, 25.485, 25.491, and 25.492

The Public Utility Commission of Texas (commission) will hold a workshop regarding amendments to §25.471, relating to General Provisions of Customer Protection Rules; §25.472, relating to Privacy of Customer Information; §25.477, relating to Refusal of Electric Service; §25.478, relating to Credit Requirements and Deposits; §25.485, relating to Customer Access and Complaint Handling; §25.491, relating to Record Retention and Reporting Requirements; and §25.492, relating to Non-Compliance with Rules or Orders; Enforcement by the Commission on Wednesday, August 13, 2003, at 9:00 a.m. in the Commissioners' Hearing Room, located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Project Number 27084, PUC Rulemaking to Revise Customer Protection Rules, has been established for this proceeding.

The commission requests that interested parties submit recommendations on amendments to the rule language that accomplishes the following goals: ensure that the rules provide adequate and appropriate protections for retail customers, while not requiring retail electric providers (REPs) to incur unnecessary compliance costs.

Responses may be filed by submitting 16 copies to the commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by August 6, 2003. All responses should reference Project Number 27084. **Parties are also asked to send a copy of filed documents to the project electronic mailing list at CUSTRULE@puc.state.tx.us.**

Prior to the workshop the commission will make available in Central Records under Project Number 27084 an agenda for the format of the

workshop. Copies of the agenda will also be available on the commission's website at www.puc.state.tx.us.

Questions concerning the workshop or this notice should be referred to Carrie Collier, Analyst-Retail Market Oversight, Electric Division, at (512) 936-7163. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-200304389
Rhonda G. Dempsey
Rules Coordinator
Public Utility Commission of Texas
Filed: July 21, 2003

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Office of Rural Community Affairs

Request for Proposals for Medically Underserved Community-State Matching Incentive Program

The Office of Rural Community Affairs (ORCA) is issuing a Request for Proposals ("RFP") for the Medically Underserved Community-State Matching Incentive Program. The purpose of this RFP is to provide the applicant with the information necessary to apply for matching state grant funds under the provisions of this program.

The purpose of this program is to increase the number of physicians providing primary care in medically underserved communities, particularly rural.

USE OF FUNDS: The funds can be used to establish a medical office and ancillary facilities for diagnosing and treating patients. The optimum use of funds would be for the purchase of equipment and furnishings that would establish a new practice site. The site will continue to serve the primary care needs of the community beyond the grant period, and the physician will agree to practice for a minimum of two years.

AMOUNT OF AWARDS: The funding available for support of this program during FY 2004 is $250,000. Approximately 10 projects will be funded. Under the requirements of this program the state grants funds of up to $25,000 to match the contributions by community groups to cover start-up costs for new physicians.

ELIGIBLE APPLICANTS: An eligible community must be in an underserved area as determined by the U.S. Department of Health and Human Services or the Texas Department of Health. The community must make a commitment of $15,000 - $25,000 in contributions toward the project and contract with a physician eligible to participate in this program.

Eligible physicians include those in family/general practice, general pediatrics, general internal medicine, or general obstetrics/gynecology. The physician must be licensed to practice in the State of Texas, have completed an accredited residency program, and have contracted with the community to provide full-time primary care for at least two years. A physician who completed residency within the last ten years will be given priority consideration.

EVALUATION AND SELECTION: ORCA will prioritize the eligible communities to assure that the neediest are provided grants. The prioritization process will quantify indicators of need that may include, but are not limited to, the following: no practicing primary care physicians; only one primary care physician and a population of at least 2,000; no federally or state-funded primary care clinic; no practicing physician assistants or nurse practitioners; the participating physician will be the only physician practicing in one of the primary care specialties; a large minority population, if the participating physician is a member of the same minority group; designation by the United States Department of Health and Human Services as a primary care Health Professional Shortage Area (HPSA) for at least the last five years; a population-to-primary care provider ratio in the top 25% of all counties in the state; poverty rates above the state average; and median family incomes at least 25% below the state average.

DEADLINE: Applications are available September 1, 2003. Completed applications are due by May 31, 2004. Announcement of the selected applicants will be made by July 31, 2004.

CONTRACT PERIOD: The budget period for applications funded under this RFP will be September 1, 2004 - August 31, 2005.

CONTACT PERSON: To obtain the application, please contact: David Darnell, Program Administrator, Office of Rural Community Affairs, P.O. Box 12877, Austin, Texas 78711, (512) 936-6701, e-mail: ddarnell@orca.state.tx.us.

TRD-200304342
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: July 17, 2003

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Request for Proposals for Rural Health Network Grant

The Office of Rural Community Affairs (Office) is issuing a Request for Proposal (RFP) for the Rural Health Network Grant. This RFP serves as the program guide for this grant program.

PROGRAM PURPOSE

The purpose of the Network Grant Program is to support collaborative efforts among rural healthcare organizations and other community entities in improving access to or quality of essential healthcare and emergency medical services that meet local needs.

AWARD AMOUNT

Funds for the Network Grant is made available through the Rural Medicare Hospital Flexibility (Flex) Program. The Office will award up to $40,000 per network that has been selected for funding, but will pay for actual costs of the project up to this cap. The grant requires a 20% match of the total funds requested, which may be cash or in-kind and which may be contributed by any member of the network. If an applicant can show hardship in meeting the match, the Office may reduce or waive the matching requirement.

USE OF FUNDS

Generally, funds should be used to support staff and contractual or professional services for the development and benefit of the network. Up to $5,000 of the total grant awarded may be used for capital investment. Funds may not be used to purchase, construct, or renovate facilities, or purchase vehicles. Funds may not be used to provide direct patient care.

ELIGIBILITY REQUIREMENTS

All Critical Access Hospitals (CAH) in Texas are eligible to apply for funding. If not a CAH, the applicant must be a public or private, nonprofit organization located in a non-metropolitan statistical area (non-MSA), as defined by the Office of Management and Budget (OMB), or in a county with a population density less than 225 persons per square mile and in city with a population of 10,000 or less. For this RFP, "rural" refers to OMB's non-MSA designation and "urban" refers to the MSA designation.

The applicant must be a member of a rural health network. For this grant program, a rural health network is defined as an organizational arrangement among healthcare organizations, providers, and other community entities that uses the shared resources of its members and specifies the goals, objectives, responsibilities, and methods by which various collaborative functions will be achieved and sustained. A network must consist of at least three separately owned, legal entities; at least one member of the network must be a designated CAH.

Horizontal networks (all members are the same type of organization) and vertical networks (members are different types of organizations) are eligible. Network members can be public, private, nonprofit, for-profit, rural, or urban-based or affiliated entities. However, for-profit and urban-based or affiliated entities are not eligible to receive funding as the applicant organization. Only CAHs and rural, nonprofit organizations are eligible to receive funding. The applicant is responsible for managing the direction of the funded project; controlling the planning, administrative, and financial management processes; and hiring staff, if needed.

Networks may cross county boundaries or other political jurisdictions. The proposed project or program of each network, however, must involve a rural rational service area. Network members must enter into a memorandum of agreement or other collaborative agreement.

APPLICATION DEADLINE Applications must be received by the Office by close of business day (5:00 P.M., CST) August 15, 2003 to be considered for funding

PROGRAM CONTACT

To obtain the RFP and application, please contact:

Quang Ngo

CAH/Flex Program Coordinator

Office of Rural Community Affairs

1700 North Congress, Suite 220

E-mail: qngo@orca.state.tx.us

Or visit our website: www.orca.state.tx.us

TRD-200304341
Robt. J. "Sam" Tessen
Executive Director
Office of Rural Community Affairs
Filed: July 17, 2003

♦ ♦ ♦

Office of the Secretary of State

Notice of Availability of the Texas State Plan

On August 1, 2003, the Secretary of State made available for public inspection the Preliminary State Plan for the State of Texas. The State Plan outlines how Texas will comply with the requirements of the federal Help America Vote Act of 2002, and how it will use grants from the federal government to achieve this goal. The Preliminary State Plan was developed with the guidance of the HAVA Advisory Committee, comprised of voter advocates, election officials and other interested stakeholders. The HAVA advisory committee met three times to discuss the plan and take public testimony. Interested individuals or groups may access a copy of the Preliminary State Plan on the Texas Secretary of State's website at www.sos.state.tx.us or by contacting Shameika Center in the Elections Division of the Office of the Secretary of State at (800) 252-8683. A 30-day comment period is provided, which will expire on August 31, 2003. Any comments must be submitted, in writing, to the Elections Division no later than August 31, 2003. Comments can be submitted to Shameika Center at scenter@sos.state.tx.us or by fax to (512) 475-2811.

TRD-200304441
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 23, 2003

♦ ♦ ♦

Preliminary Texas State Plan

Preliminary Texas State Plan

Pursuant to the Help America Vote Act of 2002 (HAVA)

Gwyn Shea

Secretary of State
P.O. Box 12060
Austin, Texas 78711-2060
www.sos.state.tx.us
(800) 252-VOTE(8683)

State Plan Committee
Help America Vote Act 2002
Preliminary State Plan

Preliminary Texas State Plan

1. **How the requirements payments (i.e., Title II funds) will be used to meet the mandates in Title III (new federal requirements)**

Brief Overview of State Elections Structure

The Secretary of State is the chief election officer of the state and is required to maintain uniformity in elections held in the state and to advise and assist local officials who actually conduct elections. The Secretary of State also has authority to adopt administrative rules to gain uniformity in interpretation of state election laws and procedures.

The conduct of elections in Texas is decentralized. The statutory requirements for elections are set out in the Texas Election Code. The county clerk or county election administrator, in those counties that have created the office, is generally the official charged with conducting county elections. County voter registrars maintain the official list of registered voters; the voter registrar is generally either the county tax assessor-collector, or again the election administrator. The county political parties conduct primary elections in Texas, with the county chair as the chief elections official. Early voting in the primary is conducted by the county elections official.

Other elections are conducted by the political subdivision. City elections are held by the city, school district elections by the school, and so on. These political subdivisions often contract with the county to conduct their election or hold joint elections with one another, but they are not required to do so. They utilize the county list of registered voters appropriate for their locality.

The Secretary of State maintains an unofficial state list of registered voters. The Secretary of State's office houses and maintains a state master file of all registered voters. The Secretary of State also maintains the Texas Voter Registration Online System ("TVRS"), which is a voluntary online voter registration system currently used by 153 counties. For those counties utilizing the TVRS system, the state database reflects their "official" voter file. The master file has approximately 12.1 million active voters and also stores approximately 2.5 million cancelled voters at any given time. The state master file maintains two separate tables defined for either "offline" or "online" counties. An offline county updates the masterfile through a web browser application, on a weekly basis in a pre-specified standard record layout. TVRS counties update in real time with all transactions validated and updated per session. At present, voter registration systems are reviewed by the Secretary of State's office to ensure that they are capable of submitting reports in a standard format as required by the state.

Texas is a state covered under Section 5 of the federal Voting Rights Act, which requires changes in election processes to be submitted to the Voting Section of the U.S. Department of Justice ("DOJ") for review prior to enforcing the change. At the state level, the Secretary of State submits changes in state election procedures. At the local level, each county must submit its changes to DOJ. These include polling place changes, change in the method of election, and adoption of new voting systems, among others.

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According to the 2000 decennial census, the voting age population of Texas was 14,965,061. The state had 12,365,235 registered voters for the 2000 general election. In the 2002 November general election, the number of registered voters was 12,563,459.

Turnout in the 2000 November general election for state and county officers was 6,407,637, which constituted 51.8% of the registered voters and 42.8% of the voting age population. Turnout in the 2002 general election for state and county officers was 4,553,979, which constituted 36.2% of registered voters and 30.4% of the voting age population, using the 2000 census numbers.

In November 2000, the breakdown of election systems used by counties was:

Paper Ballot:	90
Optical Scan:	150
Punch Card:	14
Lever Machine:	3
DRE:	4

Attached as chart "A" is a list of the county by county breakdown of voting systems. The Secretary of State is the authority charged with certifying voting systems for use in the state.

How the state will meet the Title III requirements is described in the charts below.

Voting System Standards

Voting System Standards	**Sec. 301**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
All voting systems shall permit a voter to verify/review selections before casting the vote.	Meets the requirement. Texas Election Code (TEC) Sections 64.007 and 129.001(b).	No action needed.
Allow voter to change or correct any error on the ballot before casting the vote.	Meets the requirement. TEC Section 64.007.	No action needed. .
Voting System Standards	**Sec. 301**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
Prevent or alert voter if he/she overvotes on the ballot.	Partially meets the requirement. DRE systems and precinct count optical scan systems alert the voter of an overvote. Manually counted paper ballots, centrally counted optical scan ballots, and punch card ballots do not	A voter education campaign will be

	alert the voter of overvotes. Current process on mail-in paper absentee ballots would not meet the requirement.	implemented in these precincts no later than January 1, 2006.
All voting systems must be able to produce a paper audit trail of all votes cast.	Meets the requirement. TEC Section 122.001(a)	No action needed.
Voting systems must be accessible for individuals with disabilities, including nonvisual accessibility for the blind and visually impaired, in a manner that provides the same opportunity for privacy and independence as other voters. This requirement may be met by having at least one DRE or other system equipped for individuals with disabilities at each polling site.	Partially meets the requirement. Several counties have adopted an accessible DRE voting system. Most counties do not meet this requirement.	Upgrade existing voting systems or purchase new systems. All polling places will be required to be equipped with at least one DRE no later than January 1, 2006 pursuant to House Bill 1549.

Voting System Standards	**Sec. 301**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
Voting systems shall provide alternative language accessibility pursuant to the requirements of Section 203 of the Voting Rights Act of 1965.	Meets this requirement. Languages added pursuant to Voting Rights Act from new census data will need to be added.	No action needed. Affected counties are currently working on program.
All voting systems shall have error rates (machine errors only) that do not exceed the Federal Election Commission standards.	Meets the requirement.	No action needed. This requirement was added to state law in HB 1549.
A uniform definition of what constitutes a vote for each voting system in use in the state.	Partially meets this requirement. State law provides a uniform definition in place for punch card.	State law was passed to provide a uniform definition for what constitutes a vote in paper ballot and optical scan voting methods. Definitions for DRE systems will be prescribed by administrative rule no later than January 1, 2006.

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Provisional Voting and Voting Information Requirements

Provisional Voting and Voting Information Requirements	**Sec. 302**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
A provisional voter is to be allowed to vote a paper ballot or an electronic ballot upon the completion of an affidavit. The ballot will be sealed in an envelope or electronically stored separately from the regular votes. The provisional ballot is to be transported to the appropriate election officials for determination of eligibility and counted if voter is deemed eligible.	Does not meet the requirement. Current law allows a challenged voter to fill out a challenge affidavit and then vote. The vote is counted. The affidavit is turned over to the voter registrar after the election. The voter registrar verifies the registration status and if the voter registrar believes the person was not registered, the voter registrar turns it over to the local prosecutor who shall investigate.	State law was amended to provide procedures to meet this requirement effective January 1, 2004 pursuant to House Bill 1549. The Secretary of State will adopt administrative rules to provide specific procedures.

Provisional Voting and Voting Information Requirements	**Sec. 302**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
Each voter who casts a provisional vote shall be given written information on how he or she can ascertain whether his or her vote was counted, and if not why.	Does not meet the requirement.	State will develop written instructions to be effective January 1, 2004.
Establish a free access system, such as toll-free phone number or Internet website, allowing provisional voters to ascertain whether their vote was counted, and if not why.	Does not meet the requirement.	State and counties will develop a free access system to be effective January 1, 2004.
Post in each polling place a sample version of the ballot that will be used on election day.	Partially meets the requirement. Sample ballots are optional; however, a majority of the precincts post a copy of the ballot in the precinct.	State law passed to require each precinct to post sample ballot. A definition of what a sample ballot is for DRE will need to be prescribed and distributed by January 1, 2004.
Post information regarding the day of the election and polling hours.	Does not meet the requirement.	State will prescribe language and distribute to local election authorities

		for posting no later than January 1, 2004.
Post instructions on how to vote on the voting system, including how to cast a provisional vote.	Partially meets the requirement. State law requires the posting of instructions on how to operate the voting machine or how to mark a ballot, how to get another ballot if one makes a mistake, how to receive oral instructions and assistance, and how to deposit or cast the ballot. Texas does not have provisional voting instructions.	Prescribe instructions for casting a provisional ballot no later than January 1, 2004. Post information on how to cast a provisional vote and distribute to election authorities no later than January 1, 2004.

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Provisional Voting and Voting Information Requirements	**Sec. 302**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
Post general information on state and federal voting rights and the right to a provisional vote if the requirements to vote are met.	Does not meet the requirement.	State will prescribe language and counties will post information by January 1, 2004.
Post general information on federal and state laws prohibiting acts of fraud and misrepresentation.	Does not meet the requirement. State law requires the Secretary of State to establish a toll-free line and post that number in each polling place to inform voters of the number to call to report election violations. No information on federal laws.	Prescribe additional information and post by January 1, 2004. Post information on federal laws by January 1, 2004.
Any voter who casts a vote as the result of a federal or state court order extending polling hours, shall do so on a provisional ballot, and it shall be kept separate from other provisional ballots.	Does not meet the requirement.	State law amended to provide for this occurrence and law becomes effective January 1, 2004.

Computerized Statewide Voter Registration System

Computerized Statewide Voter Registration System	**Sec. 303**	
HAVA Requirement	**State of Texas Current Status**	**Action Planned**
State shall implement a uniform, official, centralized, interactive computerized statewide voter registration list.	Does not meet the requirement. Currently, 153 counties use the Secretary of State voter registration program to register and maintain their lists of voters. The data is held at the Secretary of State's Office. State law requires the state to maintain a copy of the list of registered voters, and counties have to update to the state database once a week. The state database is not considered the official list of voters.	State law was amended to require a statewide official list maintained at the Secretary of State's office. State will develop system to meet requirements no later than January 1, 2006.
Perform list maintenance to ensure only qualified voters appear on the list, including felons and deaths of registrants. Ensure that only voters who are not registered or who are not eligible are removed from the computerized list.	State meets this requirement. State currently receives information from other state agencies regarding deaths and felons and provides this information to county voter registrars on a weekly basis. State meets this requirement. Current law prescribes narrow guidelines regarding canceling a voter's registration. Only with a positive name and identification number match can a voter be canceled. The local county voter registrar, not the state, cancels voters. Voter registrars may not cancel based on information provided by a vendor unless that information is verified by the voter registrar by a public record. TEC Chapter 16 and Section 18.0121.	No action needed. No action needed.
Ensure that voter registration records are accurate and updated regularly.	Does not meet the requirement.	State will include in new software developed, a method to monitor the activity of the county in maintaining accurate lists and will implement no later than January 1, 2006.

Computerized Statewide Voter Registration System	**Sec. 303**	

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HAVA Requirement	State of Texas Current Status	Action Planned
State to verify applicant's driver's license or social security number prior to approval of applicant.	Does not meet the requirement.	State law was amended to require verification. State will develop system to meet requirements and coordinate with other state agencies no later than January 1, 2006.
State to assign unique identifier if applicant does not have driver's license or social security number.	Does not meet this requirement.	State law was amended to require assignment of unique identifier. State will develop such system no later than January 1, 2006.
Require appropriate identification for first time voters if a computerized list has not been implemented.	Partially meets the requirement. Current state law requires identification to vote in person for all voters who do not have their voter registration certificate.	State law was amended to require identification at time of registration for first time voters voting by mail effective January 1, 2004.
Voter registration application is required to have additional information printed on it.	Partially meets the requirement.	State will prescribe new form, print and distribute to all counties before January 1, 2004.

2. **How requirement payments will be monitored and distributed for the purpose of meeting the mandates in Title III, including determining the eligibility for receipt of payments and our methods for monitoring the performance of the local entities' continued eligibility.**

The state will work closely with the state fiscal authorities to set up a program to transfer funds to the counties. The program to transfer funds to counties will consist of the following general requirements:

- The state will require that before a county is eligible to receive funds, the county judge must certify that the county is maintaining the funding level for election administration and voter registration to be not less than the funding pattern as of February 20, 2003.
- The state will develop a list of authorized projects for which a county may apply to use HAVA funds. The list of projects will include voter education, election worker education, upgrading voting systems to comply with new federal standards, acquiring

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an accessible voting system in each polling place, upgrading voter registration software and hardware to communicate to the state voter registration master file, and other projects that are identified to comply with HAVA.

- A detailed budget estimate is described in number 6 below. The state proposes that counties be eligible for a total of $45 million in Title II requirement funds. Approximately $25.5 million will be dedicated to the county purchase of a direct recording electronic voting system ("DRE") or other accessible voting system in each polling place. Of the remaining $20 million, each county will be eligible for an amount of funds proportional to its voting age population. See attached Charts "B" and "C" for a breakdown by county of the amount of federal funds for which each county may apply. In addition, county election officers may apply directly for funds for professional election training. Funds will also be dedicated for county upgrades of voter registration election management systems to be compliant with the official statewide voter registration list. The state intends to allow the counties until September 1, 2005 to apply for these funds. Once the deadline has passed, counties may make additional applications for funding depending on how much is left after all counties have received their minimum payments and how much, if any, the state may need in requirement payments to meet HAVA mandates. The Secretary of State will adopt detailed administrative rules prescribing the application process and defining what type of programs are eligible for HAVA funding.

The Secretary of State will work with state fiscal authorities to develop a plan for monitoring and distributing requirement payments. Specifically, this grant program will fall under the general requirements of the Uniform Grant Management Standards ("UGMS") prescribed by the Governor's office. UGMS prescribes a standard set of financial management procedures and definitions and ensures accountability for expenditure of public funds.

3. Voter Education, Election Official Education and Training, and Poll Worker Training

a. Voter Education Plan Goal

The state will implement a voter education plan to educate voters from all walks of life—every eligible citizen, registered voter, and future voters will be the target audience. This plan will need to be a broad-based, inclusive, and comprehensive educational program. The intent of this voter outreach campaign will be to restore Texans' confidence in the voting process and in the voting systems used today. The state has a responsibility to instill confidence in voters that the voting process and our systems of voting are accurate, secure, and accountable. Our voter outreach efforts will need to be designed to reflect and incorporate the diverse populations of Texas through a well-executed, adaptable program, delivered in an easy-to-use format, and in alternative formats for individuals with disabilities. The mediums for delivery of this voter education program will need to be equally diverse.

b. Educating the Voter

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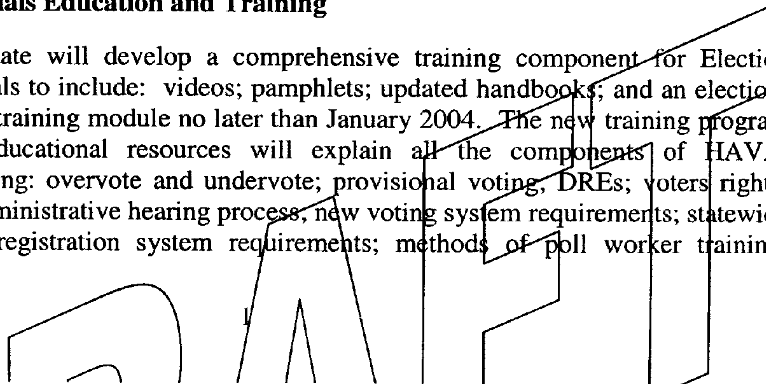
- The state has sent a survey to the 254 counties, and will compile a list of their best practices and develop resources to supplement existing training materials for the voter. The Secretary of State plans to compile this information no later than December 31, 2003
- Investigate the development of an Internet online tutorial (website application which would bring up a voter's precinct number, polling place location, offices and measures on the ballot, type of voting system, and instructions on how to use the voting system). An extensive state voter registration database will be required for such development. The tutorial will also meet the state's standards for individuals with disabilities and will be in English and in Spanish. Because the tutorial is dependent on the development of the statewide voter registrar, no detailed timeline for this project is possible until the feasibility and compatibility is determined.
- A program will be developed for each type of voting system, including the hand-counted paper ballot system, to educate the voter on what constitutes a legal vote for each type of voting machine and how to correctly cast a ballot for each type of voting system no later than January 1, 2006.
- The state will prescribe an informational voting poster and materials for statewide distribution to include: sample ballots; dates and hours of voting; instructions for voters registering by mail and for first-time voters; voter rights (including the right to vote a provisional ballot, undervotes/overvotes and new identification procedures); and legal notice prohibiting voter fraud and misrepresentation no later than January 1, 2006. This information will be disseminated through various mediums: printed materials, speaker's bureau, and Internet (offered in multiple educational formats such as .pdf and PowerPoint), and will be available in alternative formats for individuals with disabilities and will be in English and in Spanish.
- The state will pursue the possibility of compiling an educational module for voter advocacy groups to educate election volunteers and candidates.
- The Secretary of State will appoint a voter education advisory committee composed of voter advocacy groups and other interested stakeholders to advise the Secretary of State on HAVA-related voter education materials and programs.

c. Election Officials Education and Training

- The state will develop a comprehensive training component for Election Officials to include: videos; pamphlets; updated handbooks; and an election-based training module no later than January 2004. The new training program and educational resources will explain all the components of HAVA, including: overvote and undervote; provisional voting; DREs; voters rights; the administrative hearing process; new voting system requirements; statewide voter registration system requirements; methods of poll worker training;



accessibility for people with disabilities; and alternative language requirements.

- The state will look into the possibility of developing an outreach program working with the Department of Public Safety (DPS) to provide resources and materials to improve the voter registration process no later than January 2005.
- The state will work proactively with election officials to assist and advise in the recruitment of college and university students as poll workers.
- The state will investigate the possible creation of an on-line training module for election officials, with a possible certification component no later than January 2006.

d. Training of Poll Workers

- The state will develop materials for a standardized curriculum for training of election judges and clerks. The training standards may include required attendance at appropriate training programs or the passage of an examination at the end of a training program. All materials and updated election official handbooks will reflect HAVA requirements no later than January 2004.
- The state will also investigate the possibility of making this module available to poll workers via the Internet, with an interactive testing component.
- Secretary of State staff will conduct on-site and video-conferencing training for election judges and clerks before each primary and general election.

4. How the state will adopt voting system guidelines consistent with Sec. 301 (Sec. 254, a, 4).

Voting System Standards

The state of Texas' voting systems standards contained at Section 122.001 of the Texas Election Code are already in substantial compliance with the requirements set out in Section 301(a)(1) of HAVA. Pursuant to an administrative rule adopted by the Secretary of State, Rule 81.61, before any voting system may be certified for use in a Texas election, the voting system must meet the voluntary voting systems standards promulgated by the Federal Election Commission. Texas Administrative Code § 81.61 (Tex. Sec. of State).

Overvote and Opportunity to Correct Ballot

All systems used in Texas allow a voter to change his or her vote. In a paper or optical scan ballot system, a voter may receive up to two replacement ballots if he or she makes an error marking the original ballot. Texas currently posts voting instructions that inform the voter of his or her right to replace a spoiled ballot.

Precinct-level optical scan voting systems inform the voter of an overvote in a particular race and give the voter an opportunity to correct the ballot. Texas Administrative Code § 81.52 (Tex. Sec. of State). Direct Recording Electronic voting systems ("DREs") currently certified for use in Texas and mechanical lever machines do not allow for overvoting. In

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those entities using hand-counted paper ballot, central count optical scan, mechanical lever machines or punch card voting systems, the voter is not informed when he or she overvotes in a race; however, language will be added to voter instructions to inform voters of the definition and consequences of an overvote, and Texas will establish a voter education program to explain the effect of overvoting. Punch card and lever voting systems will be phased out of use. The Texas Legislature passed legislation this year to prohibit their use after January 1, 2006.

All of the systems used in Texas allow voters to view their choices before they cast their ballot. DRE voting systems are already required under current state law to present voters with a summary screen of the entire ballot to allow voters to review and change their choices prior to the final cast of the ballot.

Manual Audit

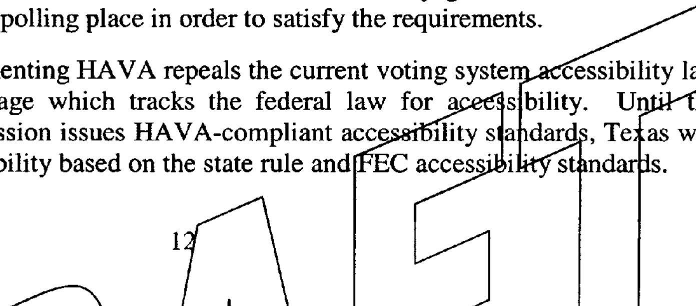
Electronic voting systems are required under state law to provide records from which the operation of the voting system may be audited. In addition, the Secretary of State has adopted an administrative rule, Section 81.61, which requires a real time audit log that records all significant election events and records the date and time of each event. Also, due to the fundamental inability of lever machines to produce a manual audit of its records, Texas has recently passed a law that prohibits the use of these systems in elections after January 1, 2006.

Accessibility

Under HAVA, the voting system must be accessible to individuals with disabilities in a manner that provides the same opportunity for access and participation as for other voters. HAVA provides that this requirement may be met by placing a DRE or other accessible voting unit in each polling place.

Texas law currently requires voting systems acquired on or after September 1, 2001 to comply with Section 504 of the federal Rehabilitation Act of 1973 (29 U.S.C. Section 794) and its subsequent amendments and Title II of the federal Americans with Disabilities Act (42 U.S.C. Section 12131 et seq.) and its subsequent amendments; and to provide a practical and effective means for voters with physical disabilities to cast a secret ballot. Detailed guidelines as to what constitutes an accessible voting system have been adopted by administrative rule which is enclosed. In all the remaining polling places throughout the state which use voting systems that do not meet the accessibility guidelines, counties will purchase at least 1 DRE per polling place in order to satisfy the requirements.

The state legislation implementing HAVA repeals the current voting system accessibility law and replaces it with language which tracks the federal law for accessibility. Until the Election Assistance Commission issues HAVA-compliant accessibility standards, Texas will continue to evaluate accessibility based on the state rule and FEC accessibility standards.



Language Accessibility

Because Texas is a state covered by Section 1973aa-1a and Section 1973b(f)(4) of the federal Voting Rights Act, voting systems are already required to provide alternative language accessibility to the ballot. Statewide, Spanish has been required since 1975 and ballots have been required to be in English and Spanish since that time. As a result of the 2000 census, in some areas of the state, Vietnamese, Kickapoo, and Pueblo languages are required. Review of whether a voting system provides alternative languages is already an element of voting system certification in Texas.

Error rates

HAVA requires that the counting error rate of voting systems must comply with the standards established under the Federal Election Commission. Secretary of State Administrative Rule 81.61 requires that before a voting system may be certified for use in Texas, the voting system must meet the voluntary voting system standards promulgated by the Federal Election Commission. In addition, the state legislation adopted to implement HAVA amends the Texas Election Code to require that all voting systems comply with the error rate standards adopted by the Federal Election Commission.

Definition of "Vote"

Current state law contains a detailed definition of a punch card vote. Texas has recently passed legislation that fully defines what constitutes a vote cast under hand-counted paper ballot, optical scan, and lever machine systems. Texas will also adopt definitions of a valid vote for specific DRE voting systems. See Exhibit D.

5. How the Election Fund will be established and managed (Sec. 254, a, 5).

The Texas Legislature created an "Election Improvement Fund" as a dedicated account in the general revenue fund and consists of federal funds designated for election improvement, matching funds from the state or a political subdivision, and depository interest earned on the assets of the fund. The state has appropriated funds to satisfy the five percent match requirement of Section 253 of HAVA in House Bill 1549, 78th Regular Session, 2003. The five percent match is estimated to be about $2.9 million dollars, but no official information has been distributed to the state regarding the exact amount of money the state is eligible for under the Title II requirements payment. The fund will be managed according to the Uniform Grant Management Standards prescribed by the Governor.

6. The state's proposed budget for activities under this part, based on the state's best estimates of the costs of such activities and the amount of funds to be made available.

The budget below is based on the state's best estimate. Exact costs for the statewide voter registration system, free access system for provisional voters, voter education, and poll worker education are not currently known. If actual costs deviate by more than 5% for any one budget

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item, the Secretary of State will reconvene the HAVA Advisory Committee for advice on how to reallocate the funds.

Title I Funds	**Amount**
Punch and Lever replacement	$ 6.35 million
Statewide voter registration system	$ 10 – 15 million
Development of State Plan and ongoing management of the plan	$ 2 – 4 million
Title II Funds	
Accessible voting system in every polling place	$ 25.5 million
Grant funding to counties for HAVA compliance	$ 20 million
Free access system for provisional voters	$ 1 million
Upgrade or replacement of county election management systems for compatibility with new voter registration system	$ 6 million
Voter education	$ 2 –3 million
Election official and poll worker training	$ 2- 3 million
County education fund	$ 1 – 2 million
Total:	$ 74.85 – 84.85 million

7. **Statement that the state will, in using the requirements payments, provide for maintaining the funding for activities funded by the payments at a level not less than the fiscal year ending before November 2000 (Sec. 254, a, 7).**

The Secretary of State, through the state's budgetary process and the distribution of the requirements payment, will ensure that expenditures of the state for activities funded by the payment will be at a level that is not less than expenditures maintained by the state for the fiscal year ending prior to November 2000.

8. **How the state will adopt performance goals and measures to determine success in carrying out the plan (Sec. 254, a, 8).**

The Secretary of State and county election officials are responsible for ensuring the success in meeting each performance goal. Each county's voter registration and elections office also have a substantial responsibility in meeting performance goals in that the counties will monitor performance measures and will report to the state on a regular basis.

The performance goals include:

ELIMINATION OF PUNCH CARD VOTING AND LEVER EQUIPMENT

a. Timetable: January 1, 2006
b. Criteria: Replacement of punch card voting equipment and lever machines in 17 counties that used voting equipment in 2000.
c. How criteria is measured: Assess 17 counties after January 1, 2006 to determine if any punch card or lever machines are being used in federal elections.
d. The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

VOTING SYSTEM STANDARDS

a. VOTING SYSTEMS
   (1) Timetable: January 1, 2006
   (2) Criteria: All voting precincts in the state will have a voting system that provides voters an opportunity to check for and correct ballot errors in a private and independent manner, notifies the voter of any overvotes cast and the effect of casting an overvote, allows the voter to correct the overvote before the ballot is cast, has a manual audit capacity, and an error rate that does not exceed the existing rate established by the FEC or Office of Election Administration. For the precincts that do not have such a system in place, an extensive voter education program will be developed and used in each county. A program will be developed for each type of voting system and paper ballot to educate the voter on what constitutes a legal vote for each type of voting machine and how to correctly cast a ballot for each type of voting system.
   (3) How the criteria is judged: Assess all counties to ensure 100% participation in using voting systems that meet the HAVA requirements or using the education program developed by the Secretary of State.
   (4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. ACCESSIBLILITY FOR INDIVIDUALS WITH DISABILITIES
   (1) Timetable: January 1, 2006
   (2) Criteria: Provide at least one direct recording voting device in each polling place in the state that will allow voters with disabilities the opportunity to cast a ballot without assistance.
   (3) How criteria is judged: Assess each county to ensure 100% of the polling places have implemented a direct recording voting device that allows voters with disabilities the opportunity to cast a ballot without assistance.
   (4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

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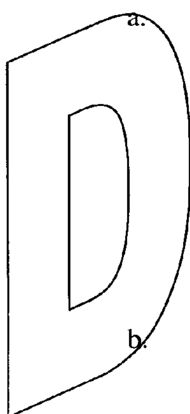
c. ALTERNATE LANGUAGE ACCESSIBILITY
(1) Timetable: Currently
(2) Criteria: Provide alternative language accessibility pursuant to the federal Voting Rights Act.
(3) How criteria is judged: Texas has provided alternative language for all voting systems, voting materials and forms used in the polling place since 1975. Before a voting system is certified by the Secretary of State, the voting system must demonstrate alternate language accessibility.
(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

PROVISIONAL VOTING



a. PROVISIONAL BALLOTS PROVIDED
(1) Timetable: January 1, 2004
(2) Criteria: Provide provisional ballots to ensure no individual is turned away at the polls.
(3) How criteria is judged: Assess all counties to ensure the new procedures for provisional voting are in place and that all election workers have been trained on the new procedures.
(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

b. FREE ACCESS SYSTEM
(1) Timetable: January 1, 2004
(2) Criteria: Implement a free access system in each county so that the voters can determine if their provisional ballot was counted.
(3) How criteria is judged: Success of meeting this performance goal is based on the establishment of a free access system in each county so that voters can determine if their provisional ballot was counted.
(4) The county election officials are responsible for meeting this measure with the advice and assistance of the Secretary of State.

c. INFORMATIONAL VOTING POSTER
(1) Timetable: January 1, 2004
(2) Criteria: Voter information must be posted at each polling place, to include: sample ballots; dates and hours of voting; instructions for voters registering by mail and for first time voters; voter rights (including the right to vote a provisional ballot); and legal notice prohibiting voter fraud and misrepresentation.
(3) How criteria is judged: Survey all counties to ensure that the voting poster is included with election supplies and that all election

workers have been instructed to post such information in the polling place.

(4) The Secretary of State will prescribe and distribute informational posters to all counties prior to January 1, 2004. The county election officials are responsible for ensuring the poster is properly posted in each precinct.

STATEWIDE VOTER REGISTRATION SYSTEM

a. COMPUTERIZED STATEWIDE VOTER LIST

(1) Timetable: January 1, 2006

(2) Criteria: Implementation of a single, uniform, official, centralized, interactive, computerized statewide voter registration list that is defined, maintained, and administered at the state level.

(3) How criteria is judged: Success of meeting this performance goal is based on the implementation of a statewide voter registration system that meets the requirements of HAVA.

(4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

b. NEW VOTER REGISTRATION APPLICATION

(1) Timetable: January 1, 2004

(2) Criteria: Prescribe, print and distribute new voter registration applications that meet the requirements of HAVA.

(3) How criteria is judged: The Secretary of State will prescribe, print and distribute a new voter registration application to all counties prior to January 1, 2004.

(4) The Secretary of State in conjunction with the county election officials is responsible for meeting this measure.

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The Secretary of State and the counties will create a report to include specific data to identify the successes of each county as it relates to the implementation of the Help America Vote Act of 2002 (HAVA). The Secretary of State will compile the data in the reports and create a statewide report on the programs. The report will include an indication of whether each county met the performance goals. If the Election Assistance Commission or any other federal agency should prescribe such a report or survey, the state will use the federal form in lieu of the state form.

9. Description of state based administrative complaint procedures (Sec. 254, a, 9):

The Secretary of State will adopt an administrative complaint procedure through its rulemaking authority. Complaints will be limited to those arising from violations of Title III of HAVA. As required under Section 402(2) of HAVA, complaints shall be required to be in writing, signed by the complainant, and notarized. The Secretary of State will have authority to consolidate complaints for efficiency and to resolve any complaints through an informal process, if warranted.

Review of the complaint will be held pursuant to the right of notice, hearing, and adjudication as set out in the administrative rule.

10. A description of how payments for punch card replacement and early out money affects the activities under the plan, including the amount of funds available (Sec. 254, a, 10).

Texas has received the Title I money for GSA. Payments for the punch card and lever voting system replacement will be distributed to eligible counties pursuant to administrative rules adopted by the Secretary of State. These rules will be according to federal law and the Uniform Grant Management Standards

11. Description of how the state will conduct ongoing management of the plan (Sec. 254, a, 11):

The Secretary of State will adopt the State of Texas Uniform Grant Management Standards and administrative rules to establish an effective management program. When material changes are necessary, the Secretary of State will propose the change in the Texas Administrative Register through the rulemaking process. In addition, the Secretary of State intends to continue working with the HAVA Advisory Committee as the plan is implemented. The State Plan provides a general framework of HAVA implementation in Texas, but the Secretary of State will be required to adopt administrative rules to define specific procedures for provisional voting and other issues, and will be designing many new forms. As rules are proposed and as new voter forms are drafted, the Secretary of State will distribute the drafts to the HAVA Advisory Committee for comments and suggestions. The Secretary of State will formally reconvene the HAVA Committee no later than June 2004 to assess Texas' progress under the State Plan.

12. Description of how the plan reflects changes from the state plan for the previous fiscal year.

Not applicable.

13. A description of the committee that participated in the development of the plan (Sec. 254, a, 13).

An advisory committee was appointed by the Secretary of State to help develop the State Plan. We enlisted professional associations, voter advocacy groups and other relevant associations, and requested that each association appoint a representative to serve on the advisory committee. The Committee conducted public meetings on the following dates: April 3, 2003, May 1, 2003, and June 27, 2003. Minutes of all Committee meetings are posted on the Secretary of State website at http://www.sos.state.tx.us/elections/hava/index.shtml.

Advisory Committee Members:

Teresa Aguirre
Texas Association of Counties

Phil Barrett
Texas Department of Information Resources

Paul Bettencourt
Harris County Tax Assessor-Collector

Paulette Burke
Texas County & District Clerks Association
Rockwall County Clerk

Brett Carr
Senate State Affairs

The Honorable Mary Denny
Texas State Representative
Chair, House Elections Committee

Judge Robert Eckels
County Judges and Commissioners Association

Frank Elder
Assistant Chief
Texas Department of Public Safety

Claude Foster
ACLU of Texas, Inc.

Barbara Hankins
Texas League of Women Voters

David Hanna
Texas Legislative Council

Beverly Kaufman
Harris County Clerk

Bob Lydia
President
NAACP

DRAFT

Molly Beth Malcolm
Chairwoman
Texas Democratic Party

Germaine Martinez
Program Specialist
Texas Department of Public Safety

The Honorable Jane Nelson
Texas State Senator

Jodi Park
Coalition of Texans with Disabilities

Nina Perales
MALDEF

Sharon Rowe
President Texas Association of Elections Administrators
Collin County Elections Administrator

Rudy Sandoval
Chief of Staff
LULAC

Michael Scholfield
Assistant General Counsel
Governor's Policy
Office of the Governor

Jonas Schwartz
Program Services Manager
Advocacy, Inc.

Bruce Sherbet
Dallas County Elections Administrator

Sandra Vice
State Auditor's Office

Bea Westbrook
President
Texas Association of Tax Assessor-Collectors
Newton County Tax Assessor Collector

DRAFT

Chad Wilbanks
Texas Republican Party

Don Willett
Deputy Attorney General, General Counsel
Office of the Texas Attorney General

DRAFT

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County Voter Registration and Precincts Report
2000 General Election
November 7, 2000

County	Voting_System	Voter_Registration	Precincts
ANDERSON	Optical Scan	27803	25
ANDREWS	Paper	7914	5
ANGELINA	Optical Scan	49562	40
ARANSAS	Optical Scan	14304	7
ARCHER	Optical Scan	6466	14
ARMSTRONG	Paper	1448	9
ATASCOSA	Optical Scan	23531	25
AUSTIN	Optical Scan	14905	19
BAILEY	Paper	3807	8
BANDERA	Optical Scan	11712	12
BASTROP	Optical Scan	31939	22
BAYLOR	Paper	3063	6
BEE	Optical Scan	16736	18
BELL	AVM	142709	43
BEXAR	Optical Scan	871783	626
BLANCO	Paper	5990	9
BORDEN	Paper	493	8
BOSQUE	Optical Scan	10378	18
BOWIE	Optical Scan	54522	37
BRAZORIA	Punch Card	147811	68
BRAZOS	Punch Card	80133	109
BREWSTER	Paper	6170	8
BRISCOE	Paper	1307	7
BROOKS	Optical Scan	7013	10
BROWN	Optical Scan	23759	18
BURLESON	Optical Scan	10406	16
BURNET	Optical Scan	22453	24
CALDWELL	Optical Scan	20183	20
CALHOUN	Optical Scan	13627	30
CALLAHAN	Optical Scan	9075	8
CAMERON	Optical Scan	148854	84
CAMP	Paper	6364	13
CARSON	Paper	4766	10
CASS	Optical Scan	19232	26
CASTRO	Paper	4933	9
CHAMBERS	Punch Card	17479	14
CHEROKEE	Optical Scan	27795	29
CHILDRESS	Paper	3990	5
CLAY	Paper	7240	17
COCHRAN	Paper	2291	8
COKE	Paper	2523	8

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COLEMAN	Paper	6731	15
COLLIN	Punch Card	296171	127
COLLINGSWORTH	Paper	2360	8
COLORADO	Optical Scan	12040	19
COMAL	Optical Scan	55994	31
COMANCHE	Paper	8613	17
CONCHO	Paper	1942	9
COOKE	Optical Scan	23932	26
CORYELL	Optical Scan	35643	21
COTTLE	Paper	1542	6
CRANE	Paper	2811	5
CROCKETT	Optical Scan	2698	5
CROSBY	Paper	4277	11
CULBERSON	Paper	2153	7
DALLAM	Paper	2889	10
DALLAS	Optical Scan/DRE	1248325	791
DAWSON	Paper	8749	12
DEAF SMITH	Optical Scan	10390	9
DELTA	Paper	3208	11
DENTON	Optical Scan	274386	126
DEWITT	Paper	12321	17
DICKENS	Paper	1590	7
DIMMIT	Optical Scan	8311	8
DONLEY	Paper	2609	10
DUVAL	Optical Scan	10490	12
EASTLAND	Optical Scan	11125	10
ECTOR	Punch Card	68622	42
EDWARDS	Paper	1463	6
ELLIS	Optical Scan	68026	60
EL PASO	Punch Card/DRE	352359	156
ERATH	Optical Scan	19166	27
FALLS	Paper	10126	13
FANNIN	Optical Scan	17605	20
FAYETTE	Optical Scan	13477	28
FISHER	Paper	2944	11
FLOYD	Paper	4623	12
FOARD	Paper	1141	5
FORT BEND	Optical Scan	202706	104
FRANKLIN	Paper	5644	10
FREESTONE	Optical Scan	10594	16
FRIO	Optical Scan	10415	11
GAINES	Optical Scan	6767	9

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GALVESTON	Optical Scan	176888	77
GARZA	Paper	3033	10
GILLESPIE	Optical Scan	14619	16
GLASSCOCK	Paper	783	5
GOLIAD	Optical Scan	5063	11
GONZALES	Optical Scan	12901	16
GRAY	Optical Scan	15618	15
GRAYSON	Optical Scan	73550	54
GREGG	Optical Scan	77898	23
GRIMES	Optical Scan	12440	21
GUADALUPE	Optical Scan/DRE	53774	83
HALE	Paper	21017	19
HALL	Paper	2340	8
HAMILTON	Optical Scan	5281	15
HANSFORD	Paper	3332	9
HARDEMAN	Paper	2927	6
HARDIN	Optical Scan	33215	18
HARRIS	Punch Card	1886581	935
HARRISON	Optical Scan	42548	29
HARTLEY	Paper	3080	7
HASKELL	Paper	4904	11
HAYS	Punch Card	66201	35
HEMPHILL	Paper	2334	9
HENDERSON	Optical Scan	45629	31
HIDALGO	Optical Scan	244668	95
HILL	Optical Scan	18995	28
HOCKLEY	Optical Scan	14282	16
HOOD	Votronic II	28996	16
HOPKINS	Optical Scan	18462	22
HOUSTON	Optical Scan	14802	22
HOWARD	Punch Card	19511	21
HUDSPETH	Paper	1669	12
HUNT	Optical Scan	47934	36
HUTCHINSON	Optical Scan	17761	15
IRION	Paper	1278	6
JACK	Paper	5076	11
JACKSON	Paper	9507	13
JASPER	Optical Scan	21709	20
JEFF DAVIS	Paper	1664	6
JEFFERSON	Punch Card	166238	106
JIM HOGG	Optical Scan	4150	5
JIM WELLS	Optical Scan	25972	22

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JOHNSON	Optical Scan	71597	35
JONES	Optical Scan	10607	16
KARNES	Optical Scan	8603	22
KAUFMAN	Optical Scan	44137	35
KENDALL	Optical Scan	17757	12
KENEDY	Optical Scan	398	7
KENT	Paper	823	7
KERR	Optical Scan	31923	17
KIMBLE	Paper	2920	8
KING	Paper	208	5
KINNEY	Paper	2500	5
KLEBERG	Optical Scan	18927	31
KNOX	Paper	3021	11
LAMAR	Optical Scan	30558	33
LAMB	Paper	9295	13
LAMPASAS	Optical Scan	10417	10
LASALLE	Optical Scan	4334	7
LAVACA	Optical Scan	13079	20
LEE	Paper	8647	13
LEON	Optical Scan	10617	15
LIBERTY	Optical Scan	42270	30
LIMESTONE	Optical Scan	13438	21
LIPSCOMB	Paper	2040	10
LIVE OAK	Paper	7416	15
LLANO	Optical Scan	12860	13
LOVING	Paper	211	5
LUBBOCK	Optical Scan	154157	94
LYNN	Paper	4377	15
MADISON	Optical Scan	6921	9
MARION	Paper	7771	16
MARTIN	Paper	3029	10
MASON	Optical Scan	2641	9
MATAGORDA	Optical Scan	23095	19
MAVERICK	Optical Scan	21783	15
MCCULLOCH	Paper	5657	11
MCLENNAN	Optical Scan	126842	98
MCMULLEN	Paper	682	6
MEDINA	Optical Scan	22582	24
MENARD	Paper	1841	7
MIDLAND	Optical Scan	71598	54
MILAM	Optical Scan	14626	22
MILLS	Paper	3178	11

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MITCHELL	Paper	5411	7
MONTAGUE	Optical Scan	12616	15
MONTGOMERY	Optical Scan	183958	73
MOORE	Optical Scan	10063	9
MORRIS	Optical Scan	8715	11
MOTLEY	Paper	972	7
NACOGDOCHES	Optical Scan	35171	29
NAVARRO	Optical Scan	27168	35
NEWTON	Optical Scan	9633	22
NOLAN	Optical Scan	10692	10
NUECES	Optical Scan	202443	123
OCHILTREE	Paper	5084	5
OLDHAM	Paper	1616	8
ORANGE	Optical Scan	55751	30
PALO PINTO	Optical Scan	17677	20
PANOLA	Optical Scan	15291	22
PARKER	Optical Scan	57041	34
PARMER	Optical Scan	4848	10
PECOS	Optical Scan	8324	10
POLK	Optical Scan	38064	21
POTTER	Optical Scan	57656	32
PRESIDIO	Paper	4222	8
RAINS	Paper	5637	8
RANDALL	Optical Scan	73860	32
REAGAN	Paper	2007	7
REAL	Paper	2516	7
RED RIVER	Paper	8776	26
REEVES	Punch Card	7854	13
REFUGIO	Optical Scan	5773	11
ROBERTS	Paper	831	6
ROBERTSON	Optical Scan	10957	17
ROCKWALL	Optical Scan	29470	14
RUNNELS	Paper	7283	10
RUSK	Optical Scan	30719	38
SABINE	Optical Scan	8026	11
SAN AUGUSTINE	Optical Scan	6749	12
SAN JACINTO	Optical Scan	14750	12
SAN PATRICIO	Optical Scan	44969	34
SAN SABA	Optical Scan	3747	8
SCHLEICHER	Paper	1835	5
SCURRY	Optical Scan	11383	12
SHACKELFORD	Paper	2491	8

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SHELBY	Optical Scan	15688	15
SHERMAN	Paper	1768	8
SMITH	Punch Card	101184	72
SOMERVELL	Paper	4884	7
STARR	Optical Scan	25984	11
STEPHENS	Optical Scan	5928	11
STERLING	Paper	1056	5
STONEWALL	Paper	1331	10
SUTTON	Paper	2601	6
SWISHER	Paper	5358	11
TARRANT	Optical Scan	851104	535
TAYLOR	Punch Card	82560	39
TERRELL	Paper	791	5
TERRY	Optical Scan	8123	9
THROCKMORTON	Paper	1325	6
TITUS	Optical Scan	15008	20
TOM GREEN	Optical Scan	64504	60
TRAVIS	Optical Scan	572429	230
TRINITY	Optical Scan	11477	20
TYLER	Optical Scan	13398	18
UPSHUR	Optical Scan	23463	21
UPTON	DRE	2399	7
UVALDE	Optical Scan	16568	16
VAL VERDE	Optical Scan	24782	21
VAN ZANDT	Optical Scan	31922	29
VICTORIA	AVM	55130	36
WALKER	Optical Scan	29556	19
WALLER	Optical Scan	20123	20
WARD	Optical Scan	7071	9
WASHINGTON	Optical Scan	19281	22
WEBB	Optical Scan	88029	42
WHARTON	Optical Scan	22612	23
WHEELER	Paper	3895	11
WICHITA	Punch Card	81059	53
WILBARGER	Paper	8830	13
WILLACY	Optical Scan	10932	13
WILLIAMSON	Optical Scan	161568	85
WILSON	Optical Scan	20462	17
WINKLER	Optical Scan	4491	6
WISE	Optical Scan	29900	23
WOOD	Optical Scan	20984	12
YOAKUM	Optical Scan	4722	7

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YOUNG	Paper	12154	13
ZAPATA	Optical Scan	6566	8
ZAVALA	Optical Scan	8726	7

CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

County	Precincts	Money	Total
ANDERSON	25	$3,000.00	$75,000.00
ANDREWS	5	$3,000.00	$15,000.00
ANGELINA	40	$3,000.00	$120,000.00
ARANSAS	7	$3,000.00	$21,000.00
ARCHER	14	$3,000.00	$42,000.00
ARMSTRONG	9	$3,000.00	$27,000.00
ATASCOSA	25	$3,000.00	$75,000.00
AUSTIN	19	$3,000.00	$57,000.00
BAILEY	8	$3,000.00	$24,000.00
BANDERA	12	$3,000.00	$36,000.00
BASTROP	22	$3,000.00	$66,000.00
BAYLOR	6	$3,000.00	$18,000.00
BEE	18	$3,000.00	$54,000.00
BELL	43	$3,000.00	$129,000.00
BEXAR	626	$3,000.00	$1,878,000.00
BLANCO	9	$3,000.00	$27,000.00
BORDEN	8	$3,000.00	$24,000.00
BOSQUE	18	$3,000.00	$54,000.00
BOWIE	37	$3,000.00	$111,000.00
BRAZORIA	68	$3,000.00	$204,000.00
BRAZOS	109	$3,000.00	$327,000.00
BREWSTER	8	$3,000.00	$24,000.00
BRISCOE	7	$3,000.00	$21,000.00
BROOKS	10	$3,000.00	$30,000.00
BROWN	18	$3,000.00	$54,000.00
BURLESON	16	$3,000.00	$48,000.00
BURNET	24	$3,000.00	$72,000.00
CALDWELL	20	$3,000.00	$60,000.00
CALHOUN	30	$3,000.00	$90,000.00
CALLAHAN	8	$3,000.00	$24,000.00
CAMERON	84	$3,000.00	$252,000.00
CAMP	13	$3,000.00	$39,000.00
CARSON	10	$3,000.00	$30,000.00
CASS	26	$3,000.00	$78,000.00
CASTRO	9	$3,000.00	$27,000.00
CHAMBERS	14	$3,000.00	$42,000.00
CHEROKEE	29	$3,000.00	$87,000.00
CHILDRESS	5	$3,000.00	$15,000.00

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CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

CLAY	17	$3,000.00	$51,000.00
COCHRAN	8	$3,000.00	$24,000.00
COKE	8	$3,000.00	$24,000.00
COLEMAN	15	$3,000.00	$45,000.00
COLLIN	127	$3,000.00	$381,000.00
COLLINGSWORTH	8	$3,000.00	$24,000.00
COLORADO	19	$3,000.00	$57,000.00
COMAL	31	$3,000.00	$93,000.00
COMANCHE	17	$3,000.00	$51,000.00
CONCHO	9	$3,000.00	$27,000.00
COOKE	26	$3,000.00	$78,000.00
CORYELL	21	$3,000.00	$63,000.00
COTTLE	6	$3,000.00	$18,000.00
CRANE	5	$3,000.00	$15,000.00
CROCKETT	5	$3,000.00	$15,000.00
CROSBY	11	$3,000.00	$33,000.00
CULBERSON	7	$3,000.00	$21,000.00
DALLAM	10	$3,000.00	$30,000.00
DALLAS	791	$3,000.00	$2,373,000.00
DAWSON	12	$3,000.00	$36,000.00
DEAF SMITH	9	$3,000.00	$27,000.00
DELTA	11	$3,000.00	$33,000.00
DENTON	126	$3,000.00	$378,000.00
DEWITT	17	$3,000.00	$51,000.00
DICKENS	7	$3,000.00	$21,000.00
DIMMIT	8	$3,000.00	$24,000.00
DONLEY	10	$3,000.00	$30,000.00
DUVAL	12	$3,000.00	$36,000.00
EASTLAND	10	$3,000.00	$30,000.00
ECTOR	42	$3,000.00	$126,000.00
EDWARDS	6	$3,000.00	$18,000.00
ELLIS	60	$3,000.00	$180,000.00
EL PASO	156	$3,000.00	$468,000.00
ERATH	27	$3,000.00	$81,000.00
FALLS	13	$3,000.00	$39,000.00
FANNIN	20	$3,000.00	$60,000.00
FAYETTE	28	$3,000.00	$84,000.00
FISHER	11	$3,000.00	$33,000.00
FLOYD	12	$3,000.00	$36,000.00

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CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

FOARD	5	$3,000.00	$15,000.00
FORT BEND	104	$3,000.00	$312,000.00
FRANKLIN	10	$3,000.00	$30,000.00
FREESTONE	16	$3,000.00	$48,000.00
FRIO	11	$3,000.00	$33,000.00
GAINES	9	$3,000.00	$27,000.00
GALVESTON	77	$3,000.00	$231,000.00
GARZA	10	$3,000.00	$30,000.00
GILLESPIE	16	$3,000.00	$48,000.00
GLASSCOCK	5	$3,000.00	$15,000.00
GOLIAD	11	$3,000.00	$33,000.00
GONZALES	16	$3,000.00	$48,000.00
GRAY	15	$3,000.00	$45,000.00
GRAYSON	54	$3,000.00	$162,000.00
GREGG	23	$3,000.00	$69,000.00
GRIMES	21	$3,000.00	$63,000.00
GUADALUPE	83	$3,000.00	$249,000.00
HALE	19	$3,000.00	$57,000.00
HALL	8	$3,000.00	$24,000.00
HAMILTON	15	$3,000.00	$45,000.00
HANSFORD	9	$3,000.00	$27,000.00
HARDEMAN	6	$3,000.00	$18,000.00
HARDIN	18	$3,000.00	$54,000.00
HARRIS	935	$3,000.00	$2,805,000.00
HARRISON	29	$3,000.00	$87,000.00
HARTLEY	7	$3,000.00	$21,000.00
HASKELL	11	$3,000.00	$33,000.00
HAYS	35	$3,000.00	$105,000.00
HEMPHILL	9	$3,000.00	$27,000.00
HENDERSON	31	$3,000.00	$93,000.00
HIDALGO	95	$3,000.00	$285,000.00
HILL	28	$3,000.00	$84,000.00
HOCKLEY	16	$3,000.00	$48,000.00
HOOD	16	$3,000.00	$48,000.00
HOPKINS	22	$3,000.00	$66,000.00
HOUSTON	22	$3,000.00	$66,000.00
HOWARD	21	$3,000.00	$63,000.00
HUDSPETH	12	$3,000.00	$36,000.00
HUNT	36	$3,000.00	$108,000.00

CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

HUTCHINSON	15	$3,000.00	$45,000.00
IRION	6	$3,000.00	$18,000.00
JACK	11	$3,000.00	$33,000.00
JACKSON	13	$3,000.00	$39,000.00
JASPER	20	$3,000.00	$60,000.00
JEFF DAVIS	6	$3,000.00	$18,000.00
JEFFERSON	106	$3,000.00	$318,000.00
JIM HOGG	5	$3,000.00	$15,000.00
JIM WELLS	22	$3,000.00	$66,000.00
JOHNSON	35	$3,000.00	$105,000.00
JONES	16	$3,000.00	$48,000.00
KARNES	22	$3,000.00	$66,000.00
KAUFMAN	35	$3,000.00	$105,000.00
KENDALL	12	$3,000.00	$36,000.00
KENEDY	7	$3,000.00	$21,000.00
KENT	7	$3,000.00	$21,000.00
KERR	17	$3,000.00	$51,000.00
KIMBLE	8	$3,000.00	$24,000.00
KING	5	$3,000.00	$15,000.00
KINNEY	5	$3,000.00	$15,000.00
KLEBERG	31	$3,000.00	$93,000.00
KNOX	11	$3,000.00	$33,000.00
LAMAR	33	$3,000.00	$99,000.00
LAMB	13	$3,000.00	$39,000.00
LAMPASAS	10	$3,000.00	$30,000.00
LASALLE	7	$3,000.00	$21,000.00
LAVACA	20	$3,000.00	$60,000.00
LEE	13	$3,000.00	$39,000.00
LEON	15	$3,000.00	$45,000.00
LIBERTY	30	$3,000.00	$90,000.00
LIMESTONE	21	$3,000.00	$63,000.00
LIPSCOMB	10	$3,000.00	$30,000.00
LIVE OAK	15	$3,000.00	$45,000.00
LLANO	13	$3,000.00	$39,000.00
LOVING	5	$3,000.00	$15,000.00
LUBBOCK	94	$3,000.00	$282,000.00
LYNN	15	$3,000.00	$45,000.00
MADISON	9	$3,000.00	$27,000.00
MARION	16	$3,000.00	$48,000.00

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CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

MARTIN	10	$3,000.00	$30,000.00
MASON	9	$3,000.00	$27,000.00
MATAGORDA	19	$3,000.00	$57,000.00
MAVERICK	15	$3,000.00	$45,000.00
MCCULLOCH	11	$3,000.00	$33,000.00
MCLENNAN	98	$3,000.00	$294,000.00
MCMULLEN	6	$3,000.00	$18,000.00
MEDINA	24	$3,000.00	$72,000.00
MENARD	7	$3,000.00	$21,000.00
MIDLAND	54	$3,000.00	$162,000.00
MILAM	22	$3,000.00	$66,000.00
MILLS	11	$3,000.00	$33,000.00
MITCHELL	7	$3,000.00	$21,000.00
MONTAGUE	15	$3,000.00	$45,000.00
MONTGOMERY	73	$3,000.00	$219,000.00
MOORE	9	$3,000.00	$27,000.00
MORRIS	11	$3,000.00	$33,000.00
MOTLEY	7	$3,000.00	$21,000.00
NACOGDOCHES	29	$3,000.00	$87,000.00
NAVARRO	35	$3,000.00	$105,000.00
NEWTON	22	$3,000.00	$66,000.00
NOLAN	10	$3,000.00	$30,000.00
NUECES	123	$3,000.00	$369,000.00
OCHILTREE	5	$3,000.00	$15,000.00
OLDHAM	8	$3,000.00	$24,000.00
ORANGE	30	$3,000.00	$90,000.00
PALO PINTO	20	$3,000.00	$60,000.00
PANOLA	22	$3,000.00	$66,000.00
PARKER	34	$3,000.00	$102,000.00
PARMER	10	$3,000.00	$30,000.00
PECOS	10	$3,000.00	$30,000.00
POLK	21	$3,000.00	$63,000.00
POTTER	32	$3,000.00	$96,000.00
PRESIDIO	8	$3,000.00	$24,000.00
RAINS	8	$3,000.00	$24,000.00
RANDALL	32	$3,000.00	$96,000.00
REAGAN	7	$3,000.00	$21,000.00
REAL	7	$3,000.00	$21,000.00
RED RIVER	26	$3,000.00	$78,000.00

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CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

REEVES	13	$3,000.00	$39,000.00
REFUGIO	11	$3,000.00	$33,000.00
ROBERTS	6	$3,000.00	$18,000.00
ROBERTSON	17	$3,000.00	$51,000.00
ROCKWALL	14	$3,000.00	$42,000.00
RUNNELS	10	$3,000.00	$30,000.00
RUSK	38	$3,000.00	$114,000.00
SABINE	11	$3,000.00	$33,000.00
SAN AUGUSTINE	12	$3,000.00	$36,000.00
SAN JACINTO	12	$3,000.00	$36,000.00
SAN PATRICIO	34	$3,000.00	$102,000.00
SAN SABA	8	$3,000.00	$24,000.00
SCHLEICHER	5	$3,000.00	$15,000.00
SCURRY	12	$3,000.00	$36,000.00
SHACKELFORD	8	$3,000.00	$24,000.00
SHELBY	15	$3,000.00	$45,000.00
SHERMAN	8	$3,000.00	$24,000.00
SMITH	72	$3,000.00	$216,000.00
SOMERVELL	7	$3,000.00	$21,000.00
STARR	11	$3,000.00	$33,000.00
STEPHENS	11	$3,000.00	$33,000.00
STERLING	5	$3,000.00	$15,000.00
STONEWALL	10	$3,000.00	$30,000.00
SUTTON	6	$3,000.00	$18,000.00
SWISHER	11	$3,000.00	$33,000.00
TARRANT	535	$3,000.00	$1,605,000.00
TAYLOR	39	$3,000.00	$117,000.00
TERRELL	5	$3,000.00	$15,000.00
TERRY	9	$3,000.00	$27,000.00
THROCKMORTON	6	$3,000.00	$18,000.00
TITUS	20	$3,000.00	$60,000.00
TOM GREEN	60	$3,000.00	$180,000.00
TRAVIS	230	$3,000.00	$690,000.00
TRINITY	20	$3,000.00	$60,000.00
TYLER	18	$3,000.00	$54,000.00
UPSHUR	21	$3,000.00	$63,000.00
UPTON	7	$3,000.00	$21,000.00
UVALDE	16	$3,000.00	$48,000.00
VAL VERDE	21	$3,000.00	$63,000.00

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CHART B State Plan Draft
Estimated Fund Allocation for an Accessible Voting System in Each County Polling Place

VAN ZANDT	29	$3,000.00	$87,000.00
VICTORIA	36	$3,000.00	$108,000.00
WALKER	19	$3,000.00	$57,000.00
WALLER	20	$3,000.00	$60,000.00
WARD	9	$3,000.00	$27,000.00
WASHINGTON	22	$3,000.00	$66,000.00
WEBB	42	$3,000.00	$126,000.00
WHARTON	23	$3,000.00	$69,000.00
WHEELER	11	$3,000.00	$33,000.00
WICHITA	53	$3,000.00	$159,000.00
WILBARGER	13	$3,000.00	$39,000.00
WILLACY	13	$3,000.00	$39,000.00
WILLIAMSON	85	$3,000.00	$255,000.00
WILSON	17	$3,000.00	$51,000.00
WINKLER	6	$3,000.00	$18,000.00
WISE	23	$3,000.00	$69,000.00
WOOD	12	$3,000.00	$36,000.00
YOAKUM	7	$3,000.00	$21,000.00
YOUNG	13	$3,000.00	$39,000.00
ZAPATA	8	$3,000.00	$24,000.00
ZAVALA	7	$3,000.00	$21,000.00

CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

County	VAP		
TEXAS	14,965,061	$1.30	$19,454,579.30
ANDERSON	43,678	$1.30	$56,781.40
ANDREWS	8,903	$1.30	$11,573.90
ANGELINA	57,974	$1.30	$75,366.20
ARANSAS	17,151	$1.30	$22,296.30
ARCHER	6,358	$1.30	$8,265.40
ARMSTRONG	1,589	$1.30	$2,065.70
ATASCOSA	26,373	$1.30	$34,284.90
AUSTIN	17,215	$1.30	$22,379.50
BAILEY	4,597	$1.30	$5,976.10
BANDERA	13,292	$1.30	$17,279.60
BASTROP	41,589	$1.30	$54,065.70
BAYLOR	3,135	$1.30	$4,075.50
BEE	24,794	$1.30	$32,232.20
BELL	169,236	$1.30	$220,006.80
BEXAR	996,458	$1.30	$1,295,395.40
BLANCO	6,368	$1.30	$8,278.40
BORDEN	550	$1.30	$715.00
BOSQUE	13,003	$1.30	$16,903.90
BOWIE	67,135	$1.30	$87,275.50
BRAZORIA	172,664	$1.30	$224,463.20
BRAZOS	119,680	$1.30	$155,584.00
BREWSTER	6,902	$1.30	$8,972.60
BRISCOE	1,305	$1.30	$1,696.50
BROOKS	5,459	$1.30	$7,096.70
BROWN	27,943	$1.30	$36,325.90
BURLESON	12,047	$1.30	$15,661.10
BURNET	25,779	$1.30	$33,512.70
CALDWELL	23,068	$1.30	$29,988.40
CALHOUN	14,767	$1.30	$19,197.10
CALLAHAN	9,527	$1.30	$12,385.10
CAMERON	221,932	$1.30	$288,511.60
CAMP	8,447	$1.30	$10,981.10
CARSON	4,700	$1.30	$6,110.00
CASS	22,869	$1.30	$29,729.70
CASTRO	5,541	$1.30	$7,203.30
CHAMBERS	18,507	$1.30	$24,059.10
CHEROKEE	34,383	$1.30	$44,697.90

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

CHILDRESS	5,989	$1.30	$7,785.70
CLAY	8,271	$1.30	$10,752.30
COCHRAN	2,554	$1.30	$3,320.20
COKE	2,922	$1.30	$3,798.60
COLEMAN	7,053	$1.30	$9,168.90
COLLIN	350,368	$1.30	$455,478.40
COLLINGSWORTH	2,360	$1.30	$3,068.00
COLORADO	15,171	$1.30	$19,722.30
COMAL	58,107	$1.30	$75,539.10
COMANCHE	10,475	$1.30	$13,617.50
CONCHO	3,328	$1.30	$4,326.40
COOKE	26,421	$1.30	$34,347.30
CORYELL	55,305	$1.30	$71,896.50
COTTLE	1,448	$1.30	$1,882.40
CRANE	2,722	$1.30	$3,538.60
CROCKETT	2,914	$1.30	$3,788.20
CROSBY	4,898	$1.30	$6,367.40
CULBERSON	2,018	$1.30	$2,623.40
DALLAM	4,244	$1.30	$5,517.20
DALLAS	1,599,868	$1.30	$2,079,828.40
DAWSON	11,148	$1.30	$14,492.40
DEAF SMITH	12,380	$1.30	$16,094.00
DELTA	3,964	$1.30	$5,153.20
DENTON	312,866	$1.30	$406,725.80
DE WITT	15,253	$1.30	$19,828.90
DICKENS	2,250	$1.30	$2,925.00
DIMMIT	6,847	$1.30	$8,901.10
DONLEY	2,972	$1.30	$3,863.60
DUVAL	9,252	$1.30	$12,027.60
EASTLAND	14,050	$1.30	$18,265.00
ECTOR	84,303	$1.30	$109,593.90
EDWARDS	1,546	$1.30	$2,009.80
ELLIS	77,716	$1.30	$101,030.80
EL PASO	462,199	$1.30	$600,858.70
ERATH	24,889	$1.30	$32,355.70
FALLS	13,440	$1.30	$17,472.00
FANNIN	23,992	$1.30	$31,189.60
FAYETTE	16,747	$1.30	$21,771.10
FISHER	3,304	$1.30	$4,295.20

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

FLOYD	5,332	$1.30	$6,931.60
FOARD	1,203	$1.30	$1,563.90
FORT BEND	240,980	$1.30	$313,274.00
FRANKLIN	7,159	$1.30	$9,306.70
FREESTONE	13,645	$1.30	$17,738.50
FRIO	11,592	$1.30	$15,069.60
GAINES	9,402	$1.30	$12,222.60
GALVESTON	183,289	$1.30	$238,275.70
GARZA	3,506	$1.30	$4,557.80
GILLESPIE	16,327	$1.30	$21,225.10
GLASSCOCK	935	$1.30	$1,215.50
GOLIAD	5,135	$1.30	$6,675.50
GONZALES	13,421	$1.30	$17,447.30
GRAY	17,282	$1.30	$22,466.60
GRAYSON	82,620	$1.30	$107,406.00
GREGG	81,588	$1.30	$106,064.40
GRIMES	17,715	$1.30	$23,029.50
GUADALUPE	63,693	$1.30	$82,800.90
HALE	25,532	$1.30	$33,191.60
HALL	2,753	$1.30	$3,578.90
HAMILTON	6,270	$1.30	$8,151.00
HANSFORD	3,795	$1.30	$4,933.50
HARDEMAN	3,526	$1.30	$4,583.80
HARDIN	34,715	$1.30	$45,129.50
HARRIS	2,416,022	$1.30	$3,140,828.60
HARRISON	45,441	$1.30	$59,073.30
HARTLEY	4,385	$1.30	$5,700.50
HASKELL	4,646	$1.30	$6,039.80
HAYS	73,683	$1.30	$95,787.90
HEMPHILL	2,412	$1.30	$3,135.60
HENDERSON	55,426	$1.30	$72,053.80
HIDALGO	368,461	$1.30	$478,999.30
HILL	23,961	$1.30	$31,149.30
HOCKLEY	16,098	$1.30	$20,927.40
HOOD	31,407	$1.30	$40,829.10
HOPKINS	23,605	$1.30	$30,686.50
HOUSTON	17,807	$1.30	$23,149.10
HOWARD	25,488	$1.30	$33,134.40
HUDSPETH	2,203	$1.30	$2,863.90

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

HUNT	56,268	$1.30	$73,148.40
HUTCHINSON	17,310	$1.30	$22,503.00
IRION	1,298	$1.30	$1,687.40
JACK	6,712	$1.30	$8,725.60
JACKSON	10,448	$1.30	$13,582.40
JASPER	26,165	$1.30	$34,014.50
JEFF DAVIS	1,668	$1.30	$2,168.40
JEFFERSON	186,727	$1.30	$242,745.10
JIM HOGG	3,613	$1.30	$4,696.90
JIM WELLS	26,975	$1.30	$35,067.50
JOHNSON	90,294	$1.30	$117,382.20
JONES	16,111	$1.30	$20,944.30
KARNES	12,081	$1.30	$15,705.30
KAUFMAN	50,486	$1.30	$65,631.80
KENDALL	17,277	$1.30	$22,460.10
KENEDY	293	$1.30	$380.90
KENT	682	$1.30	$886.60
KERR	33,760	$1.30	$43,888.00
KIMBLE	3,412	$1.30	$4,435.60
KING	236	$1.30	$306.80
KINNEY	2,511	$1.30	$3,264.30
KLEBERG	22,949	$1.30	$29,833.70
KNOX	3,073	$1.30	$3,994.90
LAMAR	35,831	$1.30	$46,580.30
LAMB	10,353	$1.30	$13,458.90
LAMPASAS	12,864	$1.30	$16,723.20
LA SALLE	4,143	$1.30	$5,385.90
LAVACA	14,562	$1.30	$18,930.60
LEE	11,148	$1.30	$14,492.40
LEON	11,610	$1.30	$15,093.00
LIBERTY	50,777	$1.30	$66,010.10
LIMESTONE	16,451	$1.30	$21,386.30
LIPSCOMB	2,214	$1.30	$2,878.20
LIVE OAK	9,570	$1.30	$12,441.00
LLANO	14,333	$1.30	$18,632.90
LOVING	54	$1.30	$70.20
LUBBOCK	180,367	$1.30	$234,477.10
LYNN	4,506	$1.30	$5,857.80
MCCULLOCH	6,019	$1.30	$7,824.70

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

MCLENNAN	156,687	$1.30	$203,693.10
MCMULLEN	652	$1.30	$847.60
MADISON	10,207	$1.30	$13,269.10
MARION	8,496	$1.30	$11,044.80
MARTIN	3,136	$1.30	$4,076.80
MASON	2,902	$1.30	$3,772.60
MATAGORDA	26,575	$1.30	$34,547.50
MAVERICK	29,838	$1.30	$38,789.40
MEDINA	27,925	$1.30	$36,302.50
MENARD	1,788	$1.30	$2,324.40
MIDLAND	80,975	$1.30	$105,267.50
MILAM	17,582	$1.30	$22,856.60
MILLS	3,835	$1.30	$4,985.50
MITCHELL	7,777	$1.30	$10,110.10
MONTAGUE	14,528	$1.30	$18,886.40
MONTGOMERY	207,036	$1.30	$269,146.80
MOORE	13,368	$1.30	$17,378.40
MORRIS	9,759	$1.30	$12,686.70
MOTLEY	1,084	$1.30	$1,409.20
NACOGDOCHES	44,995	$1.30	$58,493.50
NAVARRO	32,830	$1.30	$42,679.00
NEWTON	11,127	$1.30	$14,465.10
NOLAN	11,521	$1.30	$14,977.30
NUECES	224,528	$1.30	$291,886.40
OCHILTREE	6,254	$1.30	$8,130.20
OLDHAM	1,420	$1.30	$1,846.00
ORANGE	61,783	$1.30	$80,317.90
PALO PINTO	20,004	$1.30	$26,005.20
PANOLA	17,015	$1.30	$22,119.50
PARKER	64,139	$1.30	$83,380.70
PARMER	6,721	$1.30	$8,737.30
PECOS	12,160	$1.30	$15,808.00
POLK	31,698	$1.30	$41,207.40
POTTER	81,747	$1.30	$106,271.10
PRESIDIO	4,915	$1.30	$6,389.50
RAINS	6,968	$1.30	$9,058.40
RANDALL	77,100	$1.30	$100,230.00
REAGAN	2,189	$1.30	$2,845.70
REAL	2,333	$1.30	$3,032.90

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

RED RIVER	10,900	$1.30	$14,170.00
REEVES	9,214	$1.30	$11,978.20
REFUGIO	5,784	$1.30	$7,519.20
ROBERTS	665	$1.30	$864.50
ROBERTSON	11,485	$1.30	$14,930.50
ROCKWALL	30,127	$1.30	$39,165.10
RUNNELS	8,398	$1.30	$10,917.40
RUSK	35,581	$1.30	$46,255.30
SABINE	8,258	$1.30	$10,735.40
SAN AUGUSTINE	6,822	$1.30	$8,868.60
SAN JACINTO	16,647	$1.30	$21,641.10
SAN PATRICIO	46,260	$1.30	$60,138.00
SAN SABA	4,460	$1.30	$5,798.00
SCHLEICHER	2,115	$1.30	$2,749.50
SCURRY	12,245	$1.30	$15,918.50
SHACKELFORD	2,421	$1.30	$3,147.30
SHELBY	18,518	$1.30	$24,073.40
SHERMAN	2,186	$1.30	$2,841.80
SMITH	128,208	$1.30	$166,670.40
SOMERVELL	4,874	$1.30	$6,336.20
STARR	33,555	$1.30	$43,621.50
STEPHENS	7,313	$1.30	$9,506.90
STERLING	993	$1.30	$1,290.90
STONEWALL	1,307	$1.30	$1,699.10
SUTTON	2,904	$1.30	$3,775.20
SWISHER	6,040	$1.30	$7,852.00
TARRANT	1,039,747	$1.30	$1,351,671.10
TAYLOR	92,895	$1.30	$120,763.50
TERRELL	794	$1.30	$1,032.20
TERRY	9,143	$1.30	$11,885.90
THROCKMORTON	1,384	$1.30	$1,799.20
TITUS	19,600	$1.30	$25,480.00
TOM GREEN	76,879	$1.30	$99,942.70
TRAVIS	619,336	$1.30	$805,136.80
TRINITY	10,625	$1.30	$13,812.50
TYLER	16,034	$1.30	$20,844.20
UPSHUR	25,771	$1.30	$33,502.30
UPTON	2,406	$1.30	$3,127.80
UVALDE	17,795	$1.30	$23,133.50

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CHART C State Plan Draft
Estimated Fund Allocation to Counties for General HAVA Requirements

VAL VERDE	30,474	$1.30	$39,616.20
VAN ZANDT	35,841	$1.30	$46,593.30
VICTORIA	59,586	$1.30	$77,461.80
WALKER	50,642	$1.30	$65,834.60
WALLER	24,277	$1.30	$31,560.10
WARD	7,573	$1.30	$9,844.90
WASHINGTON	22,868	$1.30	$29,728.40
WEBB	123,255	$1.30	$160,231.50
WHARTON	29,351	$1.30	$38,156.30
WHEELER	3,969	$1.30	$5,159.70
WICHITA	98,544	$1.30	$128,107.20
WILBARGER	10,582	$1.30	$13,756.60
WILLACY	13,730	$1.30	$17,849.00
WILLIAMSON	175,065	$1.30	$227,584.50
WILSON	22,956	$1.30	$29,842.80
WINKLER	5,033	$1.30	$6,542.90
WISE	34,990	$1.30	$45,487.00
WOOD	28,725	$1.30	$37,342.50
YOAKUM	4,972	$1.30	$6,463.60
YOUNG	13,458	$1.30	$17,495.40
ZAPATA	8,157	$1.30	$10,604.10
ZAVALA	7,644	$1.30	$9,937.20

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Chart D-Definitions of "Vote"	
Punch Card	Current law-Section 127.130(d) of the Texas Election Code: (d) Subject to Subsection (e), in any manual count conducted under this code, a vote on a ballot on which a voter indicates a vote by punching a hole in the ballot may not be counted unless: (1) at least two corners of the chad are detached; (2) light is visible through the hole; (3) an indentation on the chad from the stylus or other object is present and indicates a clearly ascertainable intent of the voter to vote; or (4) the chad reflects by other means a clearly ascertainable intent of the voter to vote. (e) Subsection (d) does not supersede any clearly ascertainable intent of the voter.
Optical Scan, Direct Recording Electronic, and Paper Ballot Systems	Effective January 1, 2004, Section 65.009(d) of the Texas Election Code will provide: The intent of the voter in marking a ballot may be determined by: (1) a distinguishing mark adjacent to the name of a candidate or political party or a voting choice associated with a proposition; (2) an oval, box, or similar marking clearly drawn around the name of a candidate or political party or a voting choice associated with a proposition; (3) a line drawn through: (A) the names of all candidates in a manner that indicates a preference for the candidates not marked if the names of the candidates not marked do not exceed the number of persons that may be elected to that office; (B) the name of each political party except one in a manner that clearly indicates a preference for the political party not marked; or (C) a voting choice associated with a proposition in a manner that clearly indicates a preference for the other voting choice associated with the proposition; or (4) any other evidence that clearly indicates the intent of the voter in choosing a candidate or political party or deciding on a proposition.

TRD-200304440
Geoffrey S. Connor
Assistant Secretary of State
Office of the Secretary of State
Filed: July 23, 2003

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Texas Department of Transportation

Notice of Award

In accordance with Government Code, Chapter 2254, Subchapter B, the Texas Department of Transportation publishes this notice of a consultant contract award for providing scope development and contract negotiation counsel to TxDOT's Information Systems Division. The request for proposal for Information Systems Division Outsourcing Contract Support was published in the *Texas Register* on April 18, 2003 (28 TexReg 3397).

The consultant will work with TxDOT's Information Systems Division to develop a detailed statement of work that defines TxDOT mainframe and production UNIX operating requirements. Further, the consultant will provide advice and guidance during contract negotiations with Northup Grumman, the operator of the West Texas Disaster Recovery and Operations Center. The work provided under this contract will provide information for the next phase of the Mainframe Location Project, which ultimately will determine whether the best interests of the state will be served by outsourcing the mainframe and production UNIX elements.

The selected consultant for these services is Allied Consultants, Inc., West Avenue, Austin, Texas 78701. The total value of the contract is $85,800.00. The contract work period started on July 25, 2003, and will continue until October 31, 2003.

TRD-200304405
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2003

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Notice of Intent--US 290 Expansion

Pursuant to 43 TAC §2.43, the Texas Department of Transportation (TxDOT) is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed project for improvements in the US 290 corridor in Harris County, Texas. The EIS is authorized pursuant to the Texas Transportation Commission Minute Order No. 104908 issued January 26, 1995.

TxDOT, in cooperation with the Federal Highway Administration (FHWA), is considering improvements in the US 290 corridor from IH 610 to FM 2920, a distance of approximately 38 miles (including the Hempstead Highway corridor and the connections to the IH 610 West Loop). The project is in Harris County, Texas, primarily within the city limits of Houston, although the corridor also extends into Jersey Village and the smaller communities of Cypress, Hockley, and Waller. A Major Investment Study (MIS) for the project was completed in 2003. The MIS evaluated modal and configuration alternatives for improvements within the study corridor and recommended a locally preferred multi-modal configuration to meet the corridor's transportation needs, while minimizing impacts to the surrounding environment.

The alternatives studied in the EIS will be variations of the multi-modal configurations suggested in the US 290 Corridor Major Investment Study. The proposed alternative includes general-purpose lanes, managed lanes (possibly toll), and a reserve for advanced high-capacity transit (light rail/bus rapid transit). The EIS will evaluate alternative alignments for potential impacts from construction and operation of the proposed roadway including, but not limited to, the following: transportation impacts (construction detours, construction traffic, mobility improvement and evacuation improvement), air, and noise impacts from construction equipment and operation of the facilities, water quality impacts from construction area and roadway storm water runoff, impacts to waters of the United States including wetlands from right-of-way encroachment, impacts to historic and archeological resources, impacts to floodplains, and impacts and/or potential displacements to residents and businesses.

To ensure that the full range of issues relating to this proposed action are addressed, a series of public scoping meetings will be held from 6 to 9 p.m., as follows:

August 25, 2003 at Jersey Village High School (7600 Solomon, Houston, Texas 77040)

August 26, 2003 at Wainwright Elementary School (5330 Milwee, Houston, Texas 77092)

August 27, 2003 at Ault Elementary School (21010 Maple Village Drive, Cypress, Texas 77429).

The purpose of the public scoping meetings will be to request comments and identify issues to be considered during evaluation of alignment alternatives and preparation of the EIS. All interested citizens are encouraged to attend these meetings. During the open house meetings, displays showing the project area and other project information will be presented and staff will be available to answer questions. In addition, a public hearing will be held in the future. Public notice will be given of the time and place of future public meetings and the public hearing. The Draft EIS will be available for public and agency review and comment prior to the public hearing.

Persons who have special communication or accommodation needs, and who plan to attend the public meeting are asked to call (713) 802-5071 at least two business days prior to the meeting so that accommodations may be made.

Appropriate federal, state and local agencies, and private organizations and citizens who have previously expressed or are known to have interest in this proposal will be sent letters describing the proposed action and soliciting comments.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to TxDOT at the following address:

Agency Contact: Dianna Noble, P.E., Texas Department of Transportation, Environmental Affairs Division, 118 East Riverside Drive, Austin, Texas 78704; phone (512) 416-2734.

TRD-200304404
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2003

♦ ♦ ♦

Public Notice--Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following web site:

http://www.dot.state.tx.us

Click on Aviation, click on Aviation Public Hearing. Or, contact Karon Wiedemann, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4520 or 1-800-68-PILOT.

TRD-200304406
Bob Jackson
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2003

How to Use the Texas Register

Information Available: The 13 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following a 30-day public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Open Meetings - notices of open meetings.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 26 (2001) is cited as follows: 26 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "26 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 26 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online through the Internet. The address is: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The ***Texas Administrative Code (TA**C*) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TA**C*.

The ***TAC*** volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the ***TA**C*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Table of TAC Titles Affected***. The table is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register*** (January 19, April 13, July 13, and October 12, 2001). If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with one or more ***Texas Register*** page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.............950, 1820

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